

ORDINANCE D-1843-07
AS AMENDED

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA,
REGULATING MASSAGE THERAPISTS

WHEREAS, the provision of massage therapy is a multi-billion dollar industry that employs over 250,000 massage therapists in the United States and provides therapeutic massages to over 45 million Americans annually; and

WHEREAS, organizations such as the American Massage Therapy Association, Associated Bodywork and Massage Professionals, American Medical Massage Association and the Commission on Massage Therapy Accreditation provide education, training, accreditation and oversight to the massage industry; and

WHEREAS, therapeutic massage has been credited with soothing chronic back pain, lowering anxiety and high blood pressure, easing post-operative pain and providing other health-related benefits; and

WHEREAS, despite the benefits of therapeutic massage, the very nature of the practice provides opportunities for unscrupulous individuals to use the moniker of "massage services" as a "cover" for prostitution and other illegal activities; and

WHEREAS, although the State of Indiana has not yet seen fit to do so, the risk to communities posed by brothels and other prostitution services operating under the guise of legitimate massage services has caused at least thirty-seven (37) states to regulate the massage therapy industry; and

WHEREAS, when a State does not regulate the massage industry in order to protect the public health, safety and welfare, that duty falls to its local municipalities; and

WHEREAS, the City of Carmel now wishes to protect and further the health, safety and welfare of its residents and guests by regulating massage therapists operating within its corporate limits and, in furtherance of this purpose, finds that the following ordinance should be and the same is hereby adopted and shall be added to the Carmel City Code as new Code Section 4-21.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Carmel, Indiana, as follows:

Section 1. The foregoing Recitals are incorporated herein by this reference.

Section 2. Chapter 4, Article 1, Division III, Section 4-21, is hereby added to the Carmel City Code and shall read as follows:

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"Sec. 4-21. Massage Therapist Permit.

(a) *Definitions.* As used in this Section:

- (1) **Massage** means a therapeutic system of structured touch, pressure, holding, and movement of the soft tissue of the body that includes the use of touch, pressure, percussion, kneading, movement, positioning, nonspecific stretching, stretching within the normal anatomical range of movement and holding, with or without the use of massage devices that mimic or enhance manual measures, as well as the external application of heat, cold, water, ice, stones, thermal therapy, lubricants, abrasives and topical preparations that are not classified as prescription drugs, and which does not include joint manipulation or spinal adjustment and diagnosis or prescribing drugs for which a license is required.
- (2) **Home Occupation Dwelling** means a dwelling used by a massage therapist to provide massages to patrons that meets the requirements for a "home occupation dwelling" set forth in the City's Zoning Ordinance.
- (3) **Massage therapist** means any person who, for any form of consideration whatsoever, gives or administers a massage to a patron.
- (4) **City** means the City of Carmel, Hamilton County, Indiana.
- (5) **Patron** means any person who receives a massage from a massage therapist.
- (6) **Accredited school of massage** means any school or institution of learning accredited by the Indiana Commission of Proprietary Education (ICOPE) or a similar state agency or commission of a state other than Indiana that requires a course of study of not less than five hundred (500) hours before a student is awarded a diploma or certificate of graduation.

(b) *Exemptions from Section.* This Section shall not apply to the following:

- (1) Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists and similar professionals licensed or registered to practice their respective professions under the laws of the State of Indiana.
- (2) Barbers and beauticians licensed or registered to practice their respective professions under the laws of the State of Indiana.
- (3) Accredited schools and colleges, and coaches and trainers employed thereby while acting within the scope of their employment.
- (4) Not-for-profit community-supported agencies authorized to operate in Indiana.

(c) *Massage therapist permit.* It shall be unlawful for any person to provide a massage to a patron within the corporate limits of the City without first obtaining a valid massage therapist permit issued pursuant to the provisions of this Section.

(1) *Application; contents:*

- a. An application for a massage therapist permit shall be filed with the Department of Community Services on a form provided by that Office. The application shall be verified under oath.

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b. The filing of a massage therapist permit application does not authorize any person to provide a massage in the City before such permit has been granted or after it has been suspended or revoked.

c. Each massage therapist permit applicant shall truthfully and completely furnish the following information with his/her application:

1. The legal name, business and residential addresses and telephone numbers of the applicant,
2. The applicant's business, occupation and employment history for the three (3) years immediately preceding the date of the application.
3. Whether the applicant previously operated as a massage therapist under any permit or license issued by another city or state, and whether that permit or license was ever suspended or revoked.
4. The applicant's Limited Criminal History report as provided to him/her pursuant to Indiana Code 10-13-3-27
5. A copy of the applicant's diploma or certificate of graduation from an accredited school of massage.
6. Proof of such professional liability insurance as is required by this Section.

(2) Granting of Permit; Renewals: Within thirty (30) days of receipt of a fully completed application, the Department of Community Services shall issue a massage therapist permit if it is found that:

- a. The application complies in all material respects with the provisions of this Section.
- b. The applicant has reasonably cooperated in the review of his/her application.
- c. The applicant has not, within the three (3) years immediately preceding the date of the application, been convicted of any crime of unlawful deviate conduct, deviate sexual conduct or sexual conduct as defined in Title 35 of the Indiana Code.
- d. The applicant has furnished a copy of an acceptable diploma or certificate of graduation from an accredited school of massage.
- e. The applicant has not had his/her massage therapist's license or permit denied or revoked for cause by any governmental entity in the United States within the three (3) years immediately preceding the date of the application.

The applicant is eighteen (18) years of age or older

- g. The applicant has professional liability insurance in an amount of not less than \$100,000 per occurrence and \$250,000 annual aggregate.
- h. The massage therapist permit fee is fully paid.

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(3) **Renewal of Permit:** The Department of Community Services shall renew a massage therapist's permit, upon request, promptly upon its verification that all of the information contained on the therapist's massage permit application is accurate and complete, that the therapist has not violated this Section, and that the permit fee has been paid.

(4) **Permit fee:**

a. The fee for massage therapist permit shall be Twenty Dollars (\$20.00), payable to the City of Carmel at the time of the issuance of such permit.

b. A massage therapist permit shall be effective for twenty four months (24) from and including the date of its issuance, unless earlier suspended or revoked.

(5) **Denial:** If a massage therapist permit or permit renewal is denied, the applicant may appeal to the City's Board of Public Works (BPW) within thirty (30) days from the date the applicant receives notice of the denial, and may further appeal the decision to the extent permitted by law. The BPW shall have sole discretion to grant said permit or deny said permit for any reason, including but not limited to, approving the permit of an applicant who was graduated successfully from an accredited school of massage that at the time said applicant graduated required fewer than 500 hours of training.

(e) *Operation.*

(1) **Compliance with law:** Every massage therapist and any commercial establishment or Home Occupation Dwelling out of which he/she operates shall comply with all applicable building, zoning, health, criminal, nuisance, fire and safety laws, rules and regulations.

(2) Every massage therapist shall make available for review, upon the request of any patron or City official, his/her massage therapist permit.

(f) *Grounds for revocation or suspension of permit:*

(1) Any violation of this Section by a massage therapist shall be grounds for the suspension or revocation of his/her massage therapist permit.

(2) It shall be unlawful for any natural person to represent himself/herself as, or to perform the services of, a massage therapist in the City without first possessing a valid massage therapist permit issued under this Section.

(3) It shall be unlawful for any natural person to advertise or solicit massage services to be performed in the City by anyone who is not a massage therapist who possesses a valid massage therapist permit issued under this Section, or any other name that would suggest they perform any of the services as defined under Section 4-21 (a)(1).

(g) *Conduct in violation of Section deemed a nuisance.* Any violation of the provisions of this Section shall be unlawful and declared a public nuisance. The City Attorney or his designee may, in addition to or in lieu of prosecuting a civil action hereunder, commence any action and take any other steps as are necessary or prudent to lawfully restrain and enjoin any person from advertising, operating or providing massages in violation of this Section.

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(h) *Penalty.* Any natural person who violates any provision of this Section shall, upon conviction, be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) per violation, in addition to the possible suspension or revocation of his/her massage therapist permit. . A violation of any provision of this Section shall constitute a separate offense for each day such violation exists."

Section 3. This Ordinance shall be in full force and effect upon passage of the Common Council, execution by the Mayor and such publication as is required by law ("Effective Date"). However, any person required to obtain a permit hereunder shall have a sixty (60) day grace period from and including the Effective Date to obtain said permit.

Section 4. All prior ordinances or parts thereof inconsistent with any provision of this Ordinance are hereby repealed to the extent of such inconsistency only, as of the Effective Date of this Ordinance. However, the repeal or amendment by this Ordinance of any other ordinance does not affect any rights or liabilities accrued, penalties incurred or proceedings begun prior to the Effective Date of this Ordinance. Those rights, liabilities and proceedings are continued and penalties shall be imposed and enforced under such repealed or amended ordinance as if this Ordinance had not been adopted.

Section 5. Should any provision or portion of this Ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions shall not be affected so long as they can, without the invalid provision, be given the effect intended by the Common Council in adopting this Ordinance. To this end, the provisions of this Ordinance are severable.

PASSED by the Common Council of the City of Carmel, Indiana, this 19th day of February 2007, by a vote of 7 ayes and 0 nays.

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This draft was prepared by Douglas C. Haney, Carmel City Attorney, on January 31, 2007. Any changes thereafter made to this document are the sole responsibility of the document sponsor.

COMMON COUNCIL FOR THE CITY OF CARMEL

James Brainard
Presiding Officer

Kevin Kirby
Kevin Kirby

Joseph C. Griffiths
Joseph C. Griffiths, President Pro Tempore

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Brian D. Mayo

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Ronald E. Carter

Mark Rattermann
Mark Rattermann

Fredrick J. Glaser
Fredrick J. Glaser

Richard L. Sharp
Richard L. Sharp

ATTEST:

Diana L. Cordray
Diana L. Cordray, IAMC, Clerk-Treasurer

Presented by me to the Mayor of the City of Carmel, Indiana this 19th day of February 2007, at 7:08 P.M.

Diana L. Cordray
Diana L. Cordray, IAMC, Clerk-Treasurer

Approved by me, Mayor of the City of Carmel, Indiana, this 19th day of February 2007, at 7:08 P.M.

James Brainard
James Brainard, Mayor

ATTEST:

Diana L. Cordray
Diana L. Cordray, IAMC, Clerk-Treasurer