

ORDINANCE NO. 2019- 036 - ADM

AN ORDINANCE CREATING A NEW CHAPTER IN THE CODE OF ORDINANCES OF THE CITY OF TRUSSVILLE FOR THE PURPOSE OF APPROVING MASSAGE THERAPY ESTABLISHMENTS TO OPERATE WITHIN THE CORPORATE LIMITS OF THE CITY OF TRUSSVILLE.

WHEREAS, the Code of Ordinances of the City of Trussville, Alabama, presently regulates massage therapy establishments primarily through its zoning ordinance; and

WHEREAS, Ala. Code § 34-43-19(c) (1975) gives local municipalities authority to regulate persons licensed by the Alabama Board of Massage Therapy in operating a business within the corporate limits; and

WHEREAS, Ala. Code § 11-45-1 (1975) further empowers municipalities to adopt ordinances and resolutions that "...provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality" and further enforce obedience to such ordinances; and

WHEREAS, the City seeks to supplement its current requirements for the regulation of massage therapy establishments in order to combat concerns of human and sex trafficking concerns that have arisen within the state; and

WHEREAS, a review of other municipal ordinances throughout the state of Alabama reveal application processes, standards, and requirements that massage therapy establishments must follow; and

WHEREAS, the City desires to define this process in order to clarify the application process, the duties, and the requirements of those seeking to do business as a massage therapy establishment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TRUSSVILLE, ALABAMA, a new chapter regulating massage therapy establishments is hereby created in the Code of Ordinances of the City of Trussville, Alabama, that states the following:

I. PURPOSE.

The purpose of this article is to set forth the process, the requirements, and the standards required for any entity or individual to be approved operate within the corporate limits of Trussville as a massage therapy establishment and/or a massage therapist as defined in this Chapter. Nothing contained in this Chapter shall be construed to alter, change, remove, or otherwise lessen any other requirement by the state of Alabama.

II. DEFINITIONS.

A "massage therapy establishment" is hereby defined to mean any building, room, place, or establishment, other than a regularly licensed hospital, clinic, or dispensary where nonmedical,

nonsurgical, nonosteopathic, or nonchiropractic manipulative exercises, massages, or procedures are practiced upon the human body, or any part thereof, for other than cosmetic or beautifying purposes, with or without the use of mechanical or other devices, by anyone not a duly licensed medical doctor, chiropractor, doctor of osteopathic medicine, physical therapist, or a nurse, or other person of a similarly registered status. For the purpose of this ordinance, a “massage therapy establishment” is one and the same as a massage parlor. This definition is not intended to include any business or establishment that engages in cosmetology.

A” massage therapist” is any person who is duly licensed pursuant to Chapter 43, Title 34 of the Code of Alabama (1975) whose license is presently in good standing with the Alabama Board of Massage Therapy and who engages in the practice of massage therapy as defined in this Ordinance.

III. APPLICATION FOR MASSAGE THERAPY APPROVAL.

A. Approval to Operate Required.

(1) Every massage therapy establishment and every massage therapist shall, prior to opening or operating obtain approval to operate as required under this Ordinance prior to being issued a business license as required in Chapter 18 of the Code of Ordinances of the City of Trussville. Failure of a massage therapy establishment to first obtain approval to operate or renew its approval shall be a violation of this ordinance. Any massage therapy establishment owner found violating this Article shall be subject to punishment as stated in section 18-46 of the Code of Ordinances or any revocation of any license as provided in section 18-47, section 18-48, and/or 18-49 of the Code of Ordinances. This may be in addition to any subsequent rights and remedies the City maintains under these Ordinances, state, or federal law.

(2) All provisions of this Ordinance shall also apply to any massage therapist who engages in the practice of massage therapy within the corporate limits of the City of Trussville.

B. Application- Form.

(1) All applications for a massage therapy establishment and massage therapists shall be filed with the City Clerk’s Office.

(2) All applications shall be verified by the applicant and shall contain the following information about the applicant and his or her massage therapy establishment.

(a) For the individual applicant, the following information shall be required:

(i) Full Name of individual seeking application;

(ii) applicant’s present address;

(iii) If applicant has resided at address for less than three (3) years, the address(es) at which the applicant resided for the prior three (3) years;

(iv) For the prior five (5) years, all places of prior employment along with address of employment, prior position, prior supervisor, and supervisor contact information;

(v) Whether the applicant was previously licensed by another state or jurisdiction within the state of Alabama, and if so, whether any such state license of license issued by another jurisdiction was suspended or revoked and for what cause;

(vi) The names and state license numbers for all employees operating at the massage therapy establishment who are providing massages to those in the establishment; and

(vii) Any other follow up information to these or other items which the city clerk or chief of police may require to be answered in order to process the application.

(b) For the massage therapy establishment or business, the following information shall be required:

(i) Name of the massage therapy establishment;

(ii) Address of the massage therapy establishment; and

(ii) Any other follow up information to these or other items which the city clerk or the chief of police may require to be answered in order to process the application.

C. Application- Other Documentation Required.

(1) At the time of filing such application, the applicant shall furnish to the police department a certified copy of the applicant's criminal background check which shall be generated by the Alabama Law Enforcement Agency and no less than sixty (60) calendar days old.

(2) Any applicant for a license under this Ordinance shall, at the time of applying for the license, present at least two (2) persons to the chief of police or such other person as he or she shall designate who shall attest in writing, as the chief of police or his designee may direct, to the good character of the applicant and to the fact that the applicant is qualified and skilled as a bona fide masseur or masseuse who is trained, experienced, and knowledgeable in the art of kneading, massaging, and striking the muscular parts of the human body, and that the applicant is learned and expert in his or her knowledge of the human anatomy as well as the circulatory and nervous systems of the human body. The two (2) persons who are providing statements shall be

over nineteen (19) years of age; shall be unrelated to the applicant by blood or marriage; and shall be a resident of the City of Trussville.

(3) The applicant, at the time of filing for approval, shall provide as part of the application the original state license issued by the Alabama Board of Massage Therapy, for visual inspection, and a list of names of all the massage therapists currently employed regardless of the number of hours worked. A copy of all licenses shall be required prior to consideration of the applicant.

(4) Any applicant shall provide a copy of the current liability insurance coverage for bodily injury and property damage for the establishment at the time of application.

(5) At the time of filing such application, the applicant shall, in addition to all of the above requirements, pay an application fee of \$25.00 which shall be used to offset the cost of processing and reviewing the application. The \$25.00 application is non-refundable if the license is not issued.

D. Qualifications.

(1) Any applicant shall only employ licensed professional massage therapists who hold a current, valid license issued from the Alabama Board of Massage Therapy. The employees licensed by the Alabama Board of Massage Therapy shall maintain these licenses in good standing with the Board.

(2) At any time upon a revocation or revocation of a license issued by the Alabama Board of Massage Therapy to an employee, the applicant shall immediately notify the chief of police in writing of the revocation or suspension. This is an affirmative duty upon the applicant following approval granted by the City Council. Failure of the applicant to notify the chief of police of the revocation or suspension shall constitute a violation of this ordinance and subject the applicant to the penalties as prescribed in the Code of Ordinances.

(3) Any applicant shall not employ any individual, massage therapist or otherwise, who has previously been convicted of prostitution. This does not prevent the City Council from considering any prior arrest or conviction of an applicant in granting the City Council's approval to operate.

E. Investigation of Applicant; Approval or Denial of Application.

(1) The chief of police or his or her designee shall conduct an investigation of each applicant to operate as massage therapy establishment and/or a massage therapist. Upon completion of the investigation, the findings of the investigation shall be attached to the application for consideration by the City Council in approving or denying the application.

(2) Upon completion of the investigation, the chief of police shall recommend to the City Council whether the applicant should be approved or denied permission to operate as a massage therapist establishment within the corporate limits of the City of Trussville. Once the

investigation and recommendation are completed, the chief of police shall submit to the City Clerk the entire file used by the chief of police in making his recommendation.

(3) The City Clerk shall then place on the City Council's agenda a resolution to approve or deny the applicant a license under this article. The City Council shall, at a regular or specially called meeting, if applicable, consider the application, the documentation, the investigation, and the chief of police's recommendation along with any relevant evidence the applicant may wish to present for consideration by the City Council. Such hearing shall be held not later than thirty (30) calendar days from the filing thereof with the City Clerk.

(4) Following the City Council's issuance of approval, the applicant may then obtain a business license as required in Chapter 18 of the Code of Ordinances of the City of Trussville.

F. Initial Issuance of Approval; Renewal Thereof.

(1) Upon a resolution approving the application, the City Clerk shall issue to the applicant notification of its approval to operate a massage therapy establishment.

(2) Upon issuance of the approval under this Chapter, the applicant shall apply for subsequent approval to operate a massage therapy establishment. A renewal applicant shall only be required to update any information that has expired or is no longer correct on the original application unless additional information is requested by the chief of police or the city clerk. The city clerk is authorized to issue approval under this section unless, in the sole discretion of the city clerk, the applicant should appear before the city council for further consideration as to whether the renewed application shall be approved. If the applicant during a renewal application shall be required to appear before the City Council at the request of the city clerk, then the City Council shall determine if the renewal application shall be approved.

(3) Prior to renewed approval, the city clerk shall verify that all municipal taxes have been paid by the applicant.

G. Revocation of Approval

If any massage therapy establishment has its approval revoked, business license revoked, or any state or county licensing requirement revoked, suspended, or negatively altered in anyway, then the massage therapy establishment must resubmit an initial application for approval by the City Council.

IV. STANDARDS AND REQUIREMENTS.

A. Massage Therapists Employed by Applicant Compliance with State Law.

(1) Any massage therapy establishment approved under this Ordinance shall only employ massage therapists who are in good standing with a presently valid and licensed having fully complied with all requirements of the Alabama Massage Therapy Licensure Act codified in

Title 34, Section 43 of the Code of Alabama (1975). This applies to those employees actively performing massage therapy upon clients of the applicant.

(2) Each massage therapy establishment approved under this Ordinance shall ensure all licenses of the massage therapists employed by the applicant and the business license issued by the City of Trussville are displayed in plain view in the establishment.

(3) Any massage therapy establishment approved under this Ordinance shall not allow any unlicensed massage therapist to perform any physical contact with the client.

B. Department of Public Health Regulations- Compliance.

(1) Any massage therapy establishment or massage therapist approved under this Ordinance shall at all times comply with any and all health regulations, rules, and requirements as shall now or hereafter be promulgated by the state and/or county department of public health.

(2) Any massage therapy establishment or massage therapist approved under this Ordinance shall during all hours of operation make the establishment's records available and open to inspection by any representative of the state and/or county health department for the purpose of assuring compliance with all regulations, rules, and requirements of the health department.

C. Cleanliness of Equipment; Requirements for Performing Massage.

(1) Any massage therapy establishment approved under this Ordinance shall ensure any and all towels, wash clothes, and other linens that may come in contact with the body of any part thereof shall be thoroughly sanitized and laundered after each individual use. Any other equipment or materials which may come in contact with the body or any part thereof of the customer, such as but not limited to tables, floors, or equipment, shall be thoroughly cleaned and sanitized after each individual use.

(2) Any massage therapy establishment approved under this Ordinance shall provide a sanitary, private area for each client to dress, to bathe or shower, or to cleanse before and after any service to be provided. Said area must be secure and must include measure to ensure the privacy of the client while dressing, bathing, showering, or cleansing before and/or after any service provided by a licensed massage therapist. The private area shall not be accessible from any public restroom, lobby or waiting area, or any private office.

(3) All massage therapy establishments and massage therapists shall enact procedures to ensure that no part of any clients' breasts, buttocks, or genital area is exposed or otherwise made subject to bodily contact by any therapist. Said procedures must be reviewed by the establishment or therapist annually, and must be updated to reflect changes in procedure or changes in rules, regulations or requirements promulgated by the state, county or other regulatory agency, if any such changes have been made.

(4) Every person applying or administering massages shall cleanse his or her hands thoroughly by washing same with soap and hot water before attending or massaging any person.

(5) Any person while applying or administering massages shall be clothed from the shoulders to the knees by a robe, smock, or other opaque apparel so that the patron or customer shall be protected from bodily contact with the person applying or administering the massage except for the hands and arms of said person applying or administering the massage.

(6) No massage therapist or any other employ of the applicant licensed under this Ordinance shall apply or administer any massage or other treatment to any patron or customer behind locked doors.

(7) A massage therapy establishment approved under this Ordinance intends to provide tanning services, the establishment shall maintain no more than two (2) tanning beds or other devices designed for tanning on the premises. The count of two (2) tanning beds or devices shall include all artificial sprayers, coatings, or products designed to simulate sun exposure. All such devices shall be maintained in a clean and sanitary state prior to each use by a client. The applicant is responsible to ensure all devices are cleaned and sanitized prior to use.

D. Hours of Operation; Maintenance of Log; Taxes.

(1) A massage therapy establishment may only operate between the hours of 7:00AM and 7:00PM.

(2) Each massage therapy establishment and massage therapist approved under this Ordinance shall maintain a register of all appointments and services provided. The register must include, at a minimum, the name of the client receiving services, the time of said appointment, the specific services provided during the appointment, and the name of the licensed massage therapist providing the service. The register shall be updated at least every day the applicant is providing services. This register shall be produced for inspection upon request by any city, county, or state official.

(3) Each massage therapy establishment and massage therapist approved under this Ordinance shall ensure all license fees are paid as provided in Chapter 18 of the Code of Ordinances of the City of Trussville, and each applicant licensed under this Ordinance shall ensure all taxes are paid as required in Chapter 82 of the Code of Ordinances of the City of Trussville. Failure to pay as provided shall be a violation of this Ordinance.

E. Advertising.

Any massage therapy establishment and massage therapist approved under this Ordinance shall be prohibited from advertising on any pornographic or escort service website.

V. PENALTIES FOR VIOLATIONS.

A. Any massage therapy establishment approved under this Ordinance, any owner of a massage therapist establishment, or any employee thereof found in violation of this Ordinance

shall be subject to criminal prosecution in the municipal court of the City of Trussville. Upon conviction, the applicant, owner, or employee may be subject to the penalties provided in section 1-5 of the Code of Ordinances of the City of Trussville.

B. Any massage therapy establishment or massage therapist approved under this Ordinance who is found in violation of this Ordinance, any county ordinance or regulation, any state law, or any other rule and regulation governing massage therapy establishments may have its business license suspended or revoked as provided in section 18-52 of the Code of Ordinances of the City of Trussville.

C. Nothing contained herein shall limit or otherwise restrict to right of the City of Trussville to seek all available remedies to which it is entitled at law.

VI. OTHER PROVISIONS; ENACTMENT.

A. If any part of this Ordinance is found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

B. Nothing contained herein shall be read or deemed to contradict or otherwise supersede any state law which is presently enacted or shall come to be enacted.

C. This Ordinance shall become effective upon its passage, adoption, and publication as provided by law.

ADOPTED this the 13th day of August, 2019.



JEF FREEMAN
COUNCIL PRESIDENT



BUDDY CHOAT
MAYOR

ATTEST: 

LYNN B. PORTER
CITY CLERK