

Commentary is for information only.
Proposed new language is double-underlined.
Proposed deleted language is ~~stricken~~.

CB 04-25

ORDINANCE NO.

AN ORDINANCE AMENDING GRC CHAPTER 9 AS IT RELATES TO BUSINESS LICENSES AND REGULATION, TO ADOPT ARTICLE 9.11, MESSAGE BUSINESS LICENSE

THE CITY OF GRESHAM DOES ORDAIN AS FOLLOWS:

Section 1. Gresham Revised Code Article 9.11 is hereby adopted as follows:

Proposed Amendment	Commentary
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<p style="text-align: center;"><u>Article 9.11</u></p> <p style="text-align: center;"><u>MESSAGE BUSINESS LICENSE</u></p> <p><u>9.11.010 Purpose</u></p> <p><u>9.11.020 Definitions</u></p> <p><u>9.11.025 Massage Business License Requirements and Term</u></p> <p><u>9.11.030 Massage Business License Application Requirements</u></p> <p><u>9.11.035 Records and Inspection of Massage Business/Facility</u></p> <p><u>9.11.040 Fees</u></p> <p><u>9.11.045 Exemptions to Massage Business License</u></p> <p><u>9.11.050 Denial, Suspension, or Revocation of Business License</u></p> <p><u>9.11.055 Unlawful Acts</u></p> <p><u>9.11.060 Standards of Operation</u></p> <p><u>9.11.065 Notice of Unlicensed Massage Business and Enforcement</u></p> <p><u>9.11.070 Violation of Local State of Emergency Measure; Penalty</u></p> <p><u>9.11.010 Purpose</u></p> <p><u>Licensed massage therapy is a legitimate healthcare profession. The purpose of this Article is to regulate the operation of massage businesses in order to address human trafficking and prostitution, as well as promote the public health, safety, and general welfare in the City of Gresham.</u></p>	<p><i>Massage businesses will be required to apply for a massage business license under this article instead of the regular business license outlined in GRC 9.05.</i></p>

9.11.020 Definitions

Business Manager. Means the person(s) designated by the operator of the massage facility to act as the representative or agent of the operator in managing day-to-day operations with the same liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has the power to direct or hire and dismiss employees, control hours of operation, create policy or rules, or purchase supplies. A business manager may also be an owner.

Employee. Means a natural person hired to work for the massage business for wages or salary. As used in this Article, employees shall include managers, independent contractors, and unpaid volunteers.

Equity Holder. Means any natural person who is a shareholder, partner, member, trustee, or other principal owner of the massage business, who owns ten percent (10%) or greater financial interest in the massage business, whether directly or through any number of holding entities, partnerships, or trusts.

Massage. Means the use of pressure, friction, stroking, tapping or kneading on the human body, or the use of vibration or stretching on the human body by manual or mechanical means or gymnastics, with or without appliances such as vibrators, infrared heat, sun lamps or external baths, and with or without lubricants such as salts, powders, liquids or cream, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition. ORS 687.011(4).

Massage Facility. Means a facility where a person engages in the practice of massage. ORS 687.011(5). It does not include (a) a career school licensed under ORS 345.010 to ORS 345.340; (b) an accredited college or university or a community college operated under ORS chapter 341; or (c) a clinic or facility owned or operated by a person authorized to practice a profession by a health professional regulatory board as defined in ORS 676.160.

Massage Therapist. Means a person licensed under ORS 687.011 to ORS 687.250, ORS 687.895 and ORS 687.991 to practice massage.

Owner(s). Means any equity holder(s) of the massage business.

Practice of Massage. Means the performance of massage for (a) purposes other than sexual contact, as defined in ORS 167.002; and (b) for compensation.

Specified Anatomical Areas. Means less than completely and opaquely covered human genitals, pubic region, buttocks, and breast below a point above the top of the areola; and/or human genitals in a discernible turgid state even if completely and opaquely covered.

Specified Sexual Activities. Means acts, stimulated acts, exhibitions, representations, depictions, or descriptions of any type of sexual activity. This includes sexually explicit conduct as defined by ORS 163.665(3); sexual contact and sexual intercourse as defined by ORS 163.305; and sexual conduct and sexual contact as defined by ORS 167.002.

9.11.025 Massage Business License Requirements and Term

(1) No person shall operate a massage business within the City without possessing a valid City business license. The business license required by this Article shall be in addition to a valid OSBMT massage facility permit See ORS 687.059, or OSBMT therapist license See ORS 687.051, or any other license or permit required by law.

(2) Massage businesses currently operating with a valid City Business License at the time this Ordinance is enacted will continue to operate with their valid license until it expires. Upon renewal of the business license, the massage business must comply with the new license requirements outlined in this Article.

(3) A business license under this Article may be renewed prior to the expiration date of the existing license by submitting to the Manager a

renewal application on the form provided by the Manager together with the required renewal fee in the amount established by Council Resolution.

(4) A business license issued under this Article shall expire after a one-year term in accordance with GRC 9.05.070.

**9.11.030 Massage Business License
Application Requirements**

A massage business license application must be submitted to the Manager for a proposed massage business. A separate massage business license must be submitted for each proposed massage business location. The massage business license application must be on a form provided by the Manager.

(1) The application for a massage business license shall include all of the following:

(a) Submission of the massage business license application shall be submitted in person at City Hall. Any subsequent renewal application may be submitted online. Applications will be reviewed for completeness and applicants will be notified of any missing information required to deem their application complete;

(b) Documentary evidence that the Equity Holders, Owners, Business Manager, and employees of the applicant are at least a minimum age of eighteen (18) years old;

(c) The full name under which each Equity Holder and Owner of the applicant is or has been known and the residence address, telephone number, and date of birth of each Equity Holder and Owner;

(d) The full names under which each massage therapist and employee of the applicant is or has been known and the residence address, telephone number, and date of birth of each;

(e) A detailed description of all services to be provided at the massage business;

(f) Documentary evidence that the applicant has possession of the premises to be licensed at the time of submission of their application. Applicant shall also provide the full name and contact information of the property management company responsible for the premises;

(g) A photocopy of any massage therapist employees' Oregon State Board of Massage Therapy (OSBMT) license, unless exempt. ORS 687.021 to ORS 687.086;

(h) If the business owner does not have a OSBMT massage therapist license, a photocopy of the owner's OSMBT facility permit.

(i) A photocopy of all applicant's employees' valid government state issued photographic identity card;

(j) Provide all phone numbers associated with the massage business;

(k) The site address of business location, and site information as may be required by wastewater, stormwater and environmental-related questions to determine compliance with local, state and federal regulatory requirements. City review of such information does not guarantee compliance with or reduce the responsibility of the applicant to comply with said laws;

(l) Business owner's Social Security number or Federal Tax ID number;

(m) A notice that the application is a public record, and that the City shall exempt from disclosure information of a personal nature to the extent permitted by the Oregon Public Records and other applicable laws;

(n) Other information deemed necessary by the Manager.

(2) All information provided by the applicant in the application or renewal application shall be kept current at all times. Each massage business

shall notify the Manager in writing within 90 business days of any changes to the information.

(3) A massage business operating as a Home Occupation under GCDC 10.0500, shall be subject to the requirements outlined in this Article.

(4) The City shall make and retain a copy of all documentation listed above. The documentation submitted to the City under this Article shall remain confidential, unless required to be disclosed by law.

9.11.035 Records and Inspection of Massage Business/Facility

(1) It is the responsibility of the Equity Holder, Business Manager, or Owner of the massage facility to keep and maintain all records for all employees of the massage business during the term of the person's employment and for at least three (3) years thereafter. These records shall, at a minimum, contain the following information: name, age, current address and telephone numbers, description of the duties and responsibilities of the person, a copy of the valid government state issued photographic identity card of the person, and any other information reasonably required by the Manager. The records shall also include a copy of the Massage Therapists' OSBMT license. A massage business shall also comply with the record requirements outlined in GRC 2.92.210.

(2) The Manager may inspect each licensed massage business to determine compliance with this Article. Inspections shall take place during the massage business operation hours described in the application.

(3) The Manager shall conduct a first inspection of the massage facility via a scheduled inspection with the massage business at no fee. In the event that a reinspection is required, the massage business will be charged a reinspection fee in an amount established by Council Resolution.

(4) The Manager may inspect, without prior notice, a massage business at any time following

the receipt of a complaint of a violation of this Article, GRC, GCDC, or OSBMT.

(5) All Equity Holders, Owners, Business Manager, and employees of the massage business shall cooperate with the Manager during an inspection. If the Manager is denied entry for the purpose of inspection, an administrative inspection warrant may be obtained as provided in GRC 7.50.020.

(6) Where any part of the licensed massage facility consists of a locked area, the areas shall be unlocked and made available for inspection without delay upon request.

9.11.040 Fees

(1) The business license fees shall be established by Council Resolution.

(2) Every applicant at the time of the submission of the business license application or renewal, shall pay the fees established by Council Resolution. The license fee shall be due at the same time each year. This anniversary date will be the first day of the same month in which the license application was originally filed.

(3) A non-profit business is required to obtain a business license. A business with an IRS 501(c)(3) classification can file proof with the City and obtain a waiver of the business license fee.

9.11.045 Exemptions to Massage Business License

(1) The licensing requirements of this Article do not apply to the following:

(a) Persons licensed under any other law of this state to do any acts included in the definition of massage in ORS 687.011 or persons working under the direction of any such person;

(b) Trainers of any amateur, semiprofessional, professional athlete or athletic team;

(c) Massage practiced at the athletic department of any institution maintained by public funds of the state or of any of its political subdivisions;

(d) Massage practiced at the athletic department of any school or college;

(e) Massage clinics operated as part of a certified class for the purpose of student training supervised by an approved instructor or preceptor, if:

(i) Any charge for the massage does not exceed the cost incurred in providing the massage; and

(ii) The student is not compensated.

(f) Students enrolled in a certified class when practicing massage techniques in a nonclinical setting, at or away from massage school premises or program sites, under the supervision of an approved instructor or preceptor, if:

(i) The student is clearly identified as a student to any member of the public receiving massage services; and

(ii) The student is not compensated.

(g) Nonresident practitioners holding a valid license, permit, certificate or registration issued by any other state or territory of the United States or by a foreign county and temporarily practicing massage in this state for a period not exceeding 30 days for the purpose of:

(i) Presenting educational or clinical programs or lectures;

(ii) Furnishing massage services during an emergency as part of a disaster response team; or

(iii) Consulting with a massage therapist licensed in this state regarding massage practices or services.

(iv) A nonresident practitioner performing massages under this section must obtain a temporary practice permit if practicing in the state for a total of more than 30 days in a calendar year through the OSBMT.

(h) Trained or licensed practitioners of psychotherapy or counseling modalities that use physical techniques to access or support psychotherapeutic processes when practicing within the scope of a license, or if the practitioner has an express oral or written agreement that the sole intent in using the physical techniques is to render the psychotherapy or counseling;

(i) Practitioners of reflexology who do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of reflexology through the application of pressure with the thumbs to reflex points on the feet, hands and ears for the purpose of bringing the body into balance, thereby promoting the well-being of clients;

(j) Practitioners who:

(i) Do not claim expressly or implicitly to be massage therapists;

(ii) Limit their work to one or more of the following practices:

(A) Using touch, words, and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement;

(B) Using minimal touch over specific points on the body to facilitate balance in the nervous system; or

(C) Using touch to affect the energy systems or channels of energy of the body.

(iii) Are certified by a professional organization or credentialing agency that:

(A) Requires a minimum level of training, demonstration of competence and adherence to an approved scope of practice and ethical standards;

(B) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and

(C) Provides contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

(k) Facilities where the only massages occurring are conducted by barbers, hair stylists or nail technologists who are duly licensed under the laws of the State of Oregon and conducted while engaging in the practices within the scope of their licenses, provided that this exception shall apply solely to the massaging of the neck, face, scalp, hands, feet, shoulders and hair of the customer or client;

(l) Facilities where the only massages occurring are conducted by State licensed physicians, surgeons, chiropractors (where the chiropractor is present on the premises during normal business hours and has seen and prepared or approved a treatment plan for each person receiving massage), physical therapists, osteopaths, or any registered nurse working on the premises of, and under the direct supervision of a State licensed physician, surgeon, chiropractor or osteopath.

9.11.050 Denial, Suspension, or Revocation of Business License

(1) In addition to the grounds set forth in GRC 9.99.050, a massage business license may be denied, suspended, or revoked if the applicant, Equity Holder, Owner or Business Manager:

(a) Has failed to comply with the conditions or requirements set forth in this Article or any other applicable law;

(b) Has made a willful misrepresentation in applying for and obtaining a license, including falsely claiming that persons listed on the business license application are Licensed Massage Therapists;

(c) Has previously been denied a license, or had a license revoked or suspended under this Article or GRC Chapter 9;

(d) Has had a massage business license revoked or suspended in another jurisdiction;

(e) The operation of the massage business has been found to be a threat to the public health or safety;

(f) Has been found to operate a massage business without the license required under this Article;

(g) Has been found in violation of OSBMT rules regulating the practice of massage in Oregon, or received any OSBMT disciplinary or administrative action;

(h) Has violated any other provisions of the GRC or GCDC.

(1) If a massage business application is incomplete due to a minor error, the Manager may provide the applicant with an opportunity to cure the application issue. The applicant must cure the application issue within a reasonable amount of time of being notified by the City of the application issue.

(2) The denial, suspension, or revocation of a massage business license shall be subject to GRC 9.99.

(3) If an application is denied, the City shall issue a full refund to the applicant of any business license fees paid.

9.11.55 Unlawful Acts

(1) It shall be unlawful for any massage business to do any of the following:

(a) Directly or indirectly, personally or through an agent of employee, conduct any message business or to use in connection with the message business, any premises, in whole or in part, without possessing a valid message business license for each premises where the message business operates;

(b) Make a willful misrepresentation in applying for or obtaining a message business license;

(c) Flee, attempt to flee, or elude compliance inspections under this Article. Eluding may include, but isn't limited to, avoidance of inspections, refusing to allow entrance to the premises, or refusing to allow inspection of all of, or any portion of, the premises.

(2) It shall be unlawful for any Equity Holder, Business Manager, Owner, or applicant of the message business to:

(a) Employ or allow to work any person as a message therapist in a message business who does not possess both a valid government state issued photographic identity card and a valid Massage Therapist License issued by the OSBMT, unless exempt;

(b) Encourage, permit, or tolerate any message therapist to engage in specified sexual activities or to expose the message therapist's specified anatomical areas within the premises while working with a message client;

(c) Fail to keep records as required by this Article or fail to permit inspection of records per GRC 9.11.035;

(d) Permit the message business facility to be used for living or sleeping quarters for any person, unless permitted under GCDC 10.0500;

(e) Fail to abide by all applicable local, state, and federal laws and statutes;

(f) Require, permit, allow, tolerate or use any electrical, mechanical or artificial device for audio and/or video recording for monitoring the performance of a massage, or the conversation or other sounds in rooms where massage are occurring without the knowledge and consent of the customer;

(g) Fail to immediately report to law enforcement any specified sexual activities occurring in a massage business; and

(h) To unlawfully advertise for the massage business in ways that violate local, state, or federal laws and statutes.

9.11.060 Standards of Operation

(1) No massage business may operate between the hours of 10:00 pm and 6:00 am.

(2) A massage business shall post its valid City Business License in a conspicuous location near the entrance of the massage facility.

(3) The massage business shall comply with all applicable local, City, county, state and federal laws and regulations.

9.11.065 Notice of Unlicensed Massage Business and Enforcement

(1) Where the City determines that an unlicensed premises is being used to operate a massage business, in addition to any other notice provided for in GRC 7.50, notice of the requirements of this Article may be provided to the Equity Holder, Business Manager, or Applicant of the massage facility by affixing a notice to the principal entrance of the unlicensed premises.

(2) Any person found to be in violation of this Article shall be subject to the enforcement actions and penalties outlined in GRC 7.50 and GRC 9.99.

* * * * *

First reading: _____

Second reading and passed: _____

Yes: _____

No: _____

Absent: _____

Abstain: _____

Eric Schmidt
City Manager

Travis Stovall
Mayor

Approved as to Form:

Ellen M. Van Riper
City Attorney