

## **ORDINANCE**

### **AN ORDINANCE AMENDING CHAPTER 8 ("BUSINESS LICENSING"), ARTICLE 38 ("MESSAGE ESTABLISHMENTS AND MESSAGE SERVICES") OF THE OAK PARK VILLAGE CODE**

**BE IT ORDAINED** by the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois, in the exercise of their home rule powers, as follows:

**Section 1. Village Code Amended.** Chapter 8 ("Business Licensing"), Article 38 ("Message Establishments and Message Services") of the Oak Park Village Code is amended by deleting the overstricken language and adding the underlined language to read as follows:

#### **Article 38 MESSAGE ESTABLISHMENTS AND MESSAGE SERVICES**

**8-38-1: DEFINITIONS:**

**8-38-2: MESSAGE ESTABLISHMENT LICENSE - REQUIRED:**

**8-38-3: CRIMINAL BACKGROUND CHECK; APPLICATION:**

**8-38-4: OPERATING REQUIREMENTS:**

**8-38-5: MESSAGE ESTABLISHMENT LICENSE - ISSUANCE CONDITIONS - TERM:**

**8-38-6: EMPLOYMENT OF LICENSED MESSAGE THERAPISTS:**

**8-38-7: PREMISES:**

**8-38-8: ADVERTISING RESTRICTIONS:**

**8-38-9: INSPECTIONS AND ENFORCEMENT:**

**8-38-10: TRANSFER OF LICENSES - RESTRICTED:**

**8-38-11: LICENSE - DISPLAY:**

**8-38-12: SUSPENSION AND REVOCATION OF LICENSE:**

**8-38-13: PENALTY:**

**8-38-1: DEFINITIONS:**

The words and phrases set forth below are hereby defined as follows for the purposes of this article:

**LICENSEE:** The operator of a massage establishment.

**MASSAGE:** A system of structure palpitation or movement of the soft tissue of the body or parts of the body, ~~as defined by the Illinois Massage Licensing Act, 225 Illinois Compiled Statutes 57/10,~~ including but not limited to any method of pressure on, friction against, or stroking, kneading, rubbing, tapping, pounding, bathing, touching, binding, painting, irritating, or stimulation of external soft parts of the body with hands or with the aid of any manual, mechanical or electrical apparatus or appliance, with or without such supplementary aids as

rubbing alcohol, liniments, antiseptic oils, powder, creams, lotions, soaps, ointments or other similar preparations commonly used in this practice.

**MASSAGE ESTABLISHMENT:** Any place of business where any person, for any consideration, engages in the practice of massage as defined above, but does not include any hospitals, nursing homes, facilities or offices at which a health care worker duly licensed by the State of Illinois provides, on an ongoing basis, professional health services to individuals.

**MASSAGE THERAPIST:** Any person who, for any consideration, engages in the practice of massage as above defined.

**PERSONS:** Any individual, copartnership, firm, association, joint stock company, corporation, or any combination of individuals of whatever form or character.

**SEXUAL OR GENITAL AREA:** The genital, pubic area, anus or perineum of any person, or the vulva or breasts of a female.

#### **8-38-2: MASSAGE ESTABLISHMENT LICENSE - REQUIRED:**

It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, upon any premises in the Village the operation of a massage establishment as defined in section 8-38-1 of this article without first having obtained a license from the Village.

#### **8-38-3: CRIMINAL BACKGROUND CHECK; APPLICATION:**

A criminal background check shall be required of applicants, ~~including fingerprinting of the applicant, unless the applicant is a licensed massage therapist by the State of Illinois.~~ At the discretion of the Village Manager or the Manager's designee, fingerprints of the applicant and any employees may also be required as part of the initial application or the renewal of a license. Fingerprints shall be processed by the Illinois State Police in conjunction with the Federal Bureau of Investigation. The cost of fingerprinting shall be paid by the applicant and any applicable background check shall be without charge. An applicant shall also provide the Village with a list of services and corresponding prices and such other information as determined by the Village as part of a written application for the issuance or renewal of a license.

#### **8-38-4: OPERATING REQUIREMENTS:**

A. Cleanliness: Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated under sanitary conditions.

~~B. Pricing: Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.~~

B ~~C~~. Clothing: A massage establishment shall require its employees, agents and independent contractors to wear clean, nontransparent outer garments covering their sexual and genital areas while on the licensed premises, and no massage establishment shall allow its employees, agents, and independent contractors to disrobe, or offer or agree to disrobe, either wholly or partially, while on the licensed premises. Any such failure to be or remain clothed, or offer or agreement to disrobe, is a violation of this article for which the licensee is strictly liable for purposes of license revocation and suspension and any penalty set forth in this Code.

C ~~D~~. Sheets And Towels: A massage establishment shall provide clean laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in a sanitary manner.

D ~~E~~. Touching: No massage establishment shall allow its employees, agents and independent contractors to touch, or offer or agree to touch, the sexual or genital areas of any person while on its licensed premises and any such touching, offer or agreement is a violation of this article for which the licensee is strictly liable for purposes of license revocation and suspension; provided, however, that the breast area may be touched during clinical massage therapy for post-mastectomy scar tissue, including myofascial release therapy, or for therapeutic treatment of breast tissue and muscles for pre- and post-surgical mastectomy, lumpectomy, or breast reconstruction; and the perineal area of a woman may be touched for clinical perineal massage therapy for a pregnant woman to ease the pain of childbirth; and the lower abdominal area may be touched for clinical lower abdominal massage therapy to relieve reproductive or digestive related pain or dysfunction.

E ~~F~~. Body Coverage: The sexual or genital areas of all customers shall be covered at all times when in the presence of an employee, agent or independent contractor; provided, however, that such areas may be uncovered during clinical massage therapy for post-mastectomy scar tissue, including myofascial release therapy, or for therapeutic treatment of breast tissue and muscles for pre- and post-surgical mastectomy, lumpectomy, or breast reconstruction; during clinical perineal massage therapy for a pregnant woman to ease the pain of childbirth;

and during clinical lower abdominal massage therapy to relieve reproductive or digestive related pain or dysfunction.

F ~~G~~. Maintenance: All walls, ceilings, floors, pools, showers, bath and steam rooms and any other physical facilities shall be in good repair, and maintained in a clean and sanitary condition.

G ~~H~~. Storage Of Preparations: Oils, creams, lotion and other preparation used in administering massages shall be kept in clean, closed containers or cabinets.

~~I. Records: A licensee shall maintain, as a business record of the licensed massage establishment, a record of: 1) the date and time of all massage services at the licensed premises; 2) the person giving such services; and 3) the amounts received for such services. The record of the date, time and service provider must be made before services are initiated and the record of the amount received must be made at the time payment is made. Such a record for the past year's services shall be available at the licensed premises in a format that can be inspected at any reasonable time upon request of the Village.~~

H ~~J~~. Entrance: A massage establishment shall maintain clear glass, which is not painted over, darkened or blocked by any cloth or obstruction, at the entrance to such establishment so that the front area where patrons are greeted is visible from the outside. A massage establishment which is located in a facility that does not have any glass on the front of the licensed premises is required to notify the Village in writing of such condition.

I ~~K~~. No Habitation: No massage establishment shall allow its employees, agents and independent contractors to use the licensed premises for habitation.

~~L. Hours: No massage establishment shall operate between the hours of ten o'clock (10:00) P.M. and six o'clock (6:00) A.M., inclusive.~~

~~M. Intoxicated Persons Prohibited: No licensee, manager, or person in charge of a massage establishment shall permit a person under the influence of intoxicating liquor or narcotic drugs to enter or remain in a massage establishment, or to provide or receive a massage.~~

~~N. Solicitation Prohibited: Every massage establishment shall provide prospective customers with written notice that provides as follows:~~

~~State law prohibits soliciting another for the purpose of a sexual act. Solicitation is punishable as a Class 4 felony subjecting an offender to fines and imprisonment and impoundment of any vehicle used by the offender to commit the offense. We~~

~~immediately report all offers or requests to buy sexual services to law enforcement.~~

K ~~Ø~~. Anti-Sexual Harassment Policy: Every massage establishment that employs massage therapists other than the license holder, shall develop, maintain and comply with a written anti-sexual harassment policy to protect employees, agents, and independent contractors against sexual assault and sexual harassment by clients. Such policy shall:

1. Encourage employees, agents, and independent contractors ("complaining employee") to immediately report to the licensee instances of alleged sexual assault and sexual harassment by clients ("offending client");
2. Describe the procedures that the complaining employee and licensee shall follow in such cases;
3. Instruct the complaining employee to cease work and to leave the immediate area where danger is perceived;
4. Permit the complaining employee to refuse to treat the offending client should the client return to the massage establishment in the future;
5. Provide the complaining employee with necessary paid time off to:
  - a. Sign a complaint with the Village's Police Department or other applicable law enforcement agency against the offending client; and
  - b. Testify as a witness at any legal proceeding that may ensue as a result of such complaint, if the complaining employee is still in the licensee's employ at the time such legal proceeding occurs;
6. Inform the complaining employee that the Illinois Human Rights Act, Cook County human rights ordinance and title VII of the Civil Rights Act of 1964 provide additional protections against sexual harassment in the workplace; and
7. Inform the employee that subsection 8-38-4K(6) of this section makes it illegal for an employer to retaliate against any employee who reasonably alleges sexual assault or sexual harassment, or in good faith avails himself or herself of the requirements set forth in subsection 8-38-4K(5) of this section, or discloses, reports or testifies about any violation of this section or rules promulgated thereunder.

L ~~P~~. Anti-Sexual Harassment Policy Provided To Employees: The establishment shall provide all employees with a current copy of the massage establishment's

anti-sexual harassment policy in English and the native language of each employee, agent, and independent contractor, and post such policy in English and the native language of each employee, agent, and independent contractor in conspicuous places in areas of the establishment, such as supply rooms or employee lunch rooms, where employees, agents, and independent contractors can reasonably be expected to see it.

~~Q. Anti-Trafficking Notice Required: Each licensed massage establishment which employs any employees or independent contractors shall post a notice printed in English, Spanish and in any other language that is spoken by employees or independent contractors of the establishment which shall be at least 8<sup>1</sup>/<sub>2</sub> inches by 11 inches in size, written in 16 point font and shall provide as follows:~~

~~If you or someone you know is being forced to engage in any activity and cannot leave, whether it is commercial sex, housework, farm work, construction, factory, retail, or restaurant work, or any other activity, call the National Human Trafficking Resource Center at 1-888-373-7888 to access help and services.~~

~~Victims of slavery and human trafficking are protected under the United States and Illinois law. The hotline is:~~

~~Available 24 hours a day, 7 days a week;~~

~~Toll Free;~~

~~Operated by non-profit non-governmental organization;~~

~~Anonymous and confidential;~~

~~Accessible in more than 160 languages; and~~

~~Able to provide help, referral to services, training and general information.~~

#### **8-38-5: MASSAGE ESTABLISHMENT LICENSE - ISSUANCE CONDITIONS - TERM:**

No license shall be issued pursuant to this article upon any of the following:

A. The operation of the massage establishment as proposed by the applicant would if permitted not comply with the applicable laws of the State of Illinois and the Village, including but not limited to Building, Health, Housing, and Fire Prevention Codes and the Village's zoning ordinance; or

B. The applicant, or any other person who shall be directly or indirectly engaged in the management or operation of the massage establishment, is not of good

moral character. In determining good moral character, the Village may take into consideration the following:

1. The applicant's conviction of a felony or misdemeanor under the laws of the United States or any state or territory thereof, or any offense directly related to the practice of the massage therapist profession;
2. The applicant or any other person has been directly or indirectly engaged in the management or operation of the massage establishment and has been found to have violated subsection 8-38-4C B, D or E, ~~or F~~ of this article;
3. The applicant's massage establishment business license has been revoked by the Village of Oak Park or has had a massage establishment business license revoked by any other local governmental entity or agency; or
4. The operation of the massage establishment as proposed by the applicant, if permitted, would violate the provisions of this article or any other provision of this Code.

C. An applicant's conviction for a violation of any provision of law set forth in this section shall not be an automatic bar to a finding of good moral character unless the conviction is for: 1) any of the sex offenses contained in 720 Illinois Compiled Statutes 5/11; or 2) any provision of 720 Illinois Compiled Statutes 5/10-9 related to trafficking in persons, or if the applicant is a registered sex offender.

D. An applicant who has been convicted of a violation of any provision of law not set forth in this section may request a hearing before the Village Manager to demonstrate that he or she has been sufficiently rehabilitated to warrant the public trust. The burden of proving such rehabilitation shall be upon the applicant.

#### **8-38-6: EMPLOYMENT OF ~~LICENSED~~ MASSAGE THERAPISTS:**

A. A massage establishment may not employ any persons as a massage therapist who does not hold a current, valid license issued by the Illinois Department of Financial and Professional Regulation as required by the Illinois Massage Licensing Act, 225 Illinois Compiled Statutes 57/1 et seq., or which is suspended, revoked, or temporarily suspended by the department under said Act or unless the person so employed is exempt from said Act pursuant to 225 Illinois Compiled States 57/25, as amended.

B. A massage establishment shall provide to the Village and maintain on-site a current list of all licensed massage therapists who perform massage services at the licensed premises and proof of a valid and current Illinois massage therapist

license issued by the Illinois Department of Financial and Professional Regulation. In addition, a massage establishment shall maintain a copy of a State-issued photo identification card for each massage therapist licensee. The massage establishment must allow inspection of such records at any reasonable time upon request of the Village.

~~C. No licensee may allow a non-licensed massage therapist to perform massage services at a massage establishment.~~

#### **8-38-7: PREMISES:**

No massage establishment shall receive a license or be operated, established or maintained upon any premises unless the establishment shall comply with the following:

A. All massage tables, lavatories and floors shall have surfaces which may be readily disinfected;

B. Toilet facilities shall be provided within the massage establishment, or within the facility that includes the massage establishment, and otherwise complies with occupancy requirements; and

C. Closed cabinets shall be provided for use in the storage of clean linens, towels and other materials used in administering massages. All soiled linens, towels and other material shall be kept in properly covered containers or cabinets which shall be kept separate from clean storage areas.

#### **8-38-8: ADVERTISING RESTRICTIONS:**

No massage establishment issued a license under this article shall depict, place, publish, distribute or cause to be depicted, placed, published or distributed any advertising matter that suggest to prospective patrons that any services are available that would constitute a felony or misdemeanor under Federal, State or Village law or would otherwise violate this Code.

#### **8-38-9: INSPECTIONS AND ENFORCEMENT:**

All massage establishments must be in compliance with this article on or before July 1, 2018. Massage establishments shall be subject to inspection by the Village ~~twice annually~~ to assure compliance with this article and all applicable laws and regulations. It shall be the duty of the licensee or the person in charge of the licensed premises to allow such inspection and admit, for purpose of making the inspection, any officer or employee of the Village who is authorized or directed to make such inspection.



**8-38-10: TRANSFER OF LICENSES - RESTRICTED:**

A massage establishment license shall not be transferable.

**8-38-11: LICENSE - DISPLAY:**

A licensee shall post a valid current massage establishment license pursuant to section 8-1-13 of this chapter.

**8-38-12: SUSPENSION AND REVOCATION OF LICENSE:**

A license issued for a massage establishment may be revoked or suspended pursuant to section 8-1-14 of this chapter.

**8-38-13: PENALTY:**

A. Any person violating any provision of this chapter shall be fined in accordance with the provisions set forth in section 1-1-5 of this Code except, however, that any violation of subsection 8-38-4~~C~~ B, D or E, ~~or F~~ of this article shall be a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00) per day for each day an offense occurs.

B. It shall be an affirmative defense for an employee or massage therapist that the employee or massage therapist was under duress or was coerced into violating any provision of this article. A victim of trafficking in persons pursuant to applicable State or Federal law shall not be deemed criminally liable for any violation of this article committed as a direct result of, or incident related to, being trafficked. Where such affirmative defense is applicable to an employee or massage therapist, such affirmative defense shall not apply to the licensee if the licensee participated in creating such coercion or duress, or knew or should have known of the existence of such coercion or duress.

**Section 2. Severability and Repeal of Inconsistent Ordinances.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance. All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 3. Effective Date.** This Ordinance shall be in full force and effect after its approval, passage and publication as provided by law.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

**ADOPTED** this 9<sup>th</sup> day of July, 2018, pursuant to a roll call vote at follows:

Voting	Aye	Nay	Abstain	Absent
President Abu-Taleb				
Trustee Andrews				
Trustee Boutet				
Trustee Button				
Trustee Moroney				
Trustee Taglia				
Trustee Tucker				

**APPROVED** this 9<sup>th</sup> day of July, 2018.

---

Anan Abu-Taleb, Village President

**ATTEST**

---

Vicki Scaman, Village Clerk

Published in pamphlet form this 9<sup>th</sup> day of July, 2018.

---

Vicki Scaman, Village Clerk