

ORDINANCE 1089

AN ORDINANCE AMENDING CHAPTER V, BUSINESS REGULATIONS, ARTICLE 1 AND ADDING ARTICLES 6, 7 AND 8 OF THE CODE OF THE CITY OF EUDORA, KANSAS, RELATING TO BUSINESS REGULATIONS.

NOW BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EUDORA, KANSAS:

SECTION I. That Chapter V, Article 1 of the Code of the City of Eudora, Kansas, is hereby amended to read as follows:

ARTICLE 1. RETAILERS REGISTRATION

5-101 Registration Required.

(a) It shall be unlawful for any person, firm or corporation acting as a retailer, either as principal, agent or employee, to conduct, pursue, carry on or operate any calling, trade, profession or occupation in the City without first applying for and receiving a certificate of registration from the City of Eudora.

(b) For the purposes of this chapter, "Retailer" is defined as a person regularly engaged in the business of selling tangible personal property, food, or drinks at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale.

(c) For the purposes of this chapter, "Premises" is defined as the physical location of a retail business.

5-102 Registration Period, Duration.

(a) If a Certificate of Occupancy pursuant to Section 10 of the City of Eudora's Zoning Regulations is required for the premises, registration shall occur as a precondition of issuance of a Certificate of Occupancy. If a Certificate of Occupancy is not required for the premises, retailers must register within the first thirty (30) days of their first business day.

(b) Registration shall commence and endure as long as the retailer's business remains open in the City of Eudora and the information submitted by the applicant to the City of Eudora remains unchanged. Any changes from the submitted application will require the retailer to submit a new application within thirty (30) days of the change.

(c) The City of Eudora shall issue a certificate of registration for each registered business. This certificate shall be posted in a prominent visible location in each business at all times.

5-103 Registration Not Assignable; Unlawful Use.

No registration granted under the provisions of this chapter shall be assigned or transferred. Each registration is only valid for the person and business named in the registration.

5-104 Application; Certification of Registration.

(a) Each registration application shall be made to the City of Eudora in writing on a form provided by the City of Eudora, or as otherwise allowed by the City of Eudora.

(b) Each application will contain, but is not limited to, the following information:

- (1) Type of business, including whether a franchise, independently owned or home-based;
- (2) Legal name and common name of business;
- (3) Business, street, mailing and e-mail addresses; telephone number; and website URL;
- (4) Date business started;
- (5) Name, mailing address and contact telephone number of each owner, partner or corporate officer;
- (6) Corporate address, contact name and telephone number (if any);
- (7) An after-hour (emergency) contact name and telephone number;
- (8) Federal Income Tax Number, Federal Employer Identification Number; and Kansas State Tax Account Number;
- (9) The numbers of any federal, state or county licenses or certificates held and proof of valid Kansas Retailers Sales Tax Registration Certificate;
- (10) Approximate number of full time and part time employees;
- (11) Anticipated sales tax filing frequency.

(c) Changes to information submitted are to be reported as soon as possible and shall be done at no charge to the registrant.

(d) Information provided on this application may be forwarded to the Kansas Department of Revenue for purposes of verifying compliance with the provisions of the Kansas Retailers' Sales Tax Act, K.S.A. 79-3601 et seq., as amended. Such information shall be subject to the confidentiality provisions set forth in K.S.A. 79-3614.

(e) If all required information is supplied and it does not appear that any state law or City ordinance will be violated in the operation of the business, the certificate of registration shall be issued.

5-105 Penalty.

Any business in violation of this chapter shall be fined not less than Twenty-Five Dollars (\$25.00) and not more than Seven Hundred Fifty Dollars (\$750.00) for each offense. Each day that a retailer operates without a valid certificate of registration shall be considered a separate offense.

SECTION II. That Chapter V, Article 6 of the Code of the City of Eudora, Kansas, is hereby added to read as follows:

ARTICLE 6. MASSAGE THERAPY

5-601. Definitions

For the purpose of this ordinance, the following words shall be considered to have the following meanings:

- (a) Business Premises means those premises where a private or public commercial enterprise is conducted, but specifically not to include businesses conducted in a private residence or premises used for joint residential and business purposes.
- (b) In-Office Massage means any Massage Therapy performed on the business premises of a massage patron.
- (c) Massage Business means any Massage Establishment or Off-Premises Massage Business.
- (d) Massage Establishment means any establishment where any person, firm, partnership, association, or corporation primarily engages in or carries on or licenses to be engaged in or carried on any of the activities mentioned in subsection F of this section for compensation. An establishment may operate from a business or corporate location or in the establishment licensee's home, subject to the requirements of this article.
- (e) Massage Therapist means any person whom, for any consideration whatsoever, engages in the practice of massage as defined in this article.
- (f) Massage Therapy means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, reflexology, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniment, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. Massage therapy does not include the touching in any fashion of a patron's pubic region, human genitals, perineum, anal region, and the area of the female breast that includes the areola and nipple.
- (g) Off-Premises Massage means any Massage Therapy performed at a patron's private residence in the City.
- (h) Off-Premises Massage Business means any business, not located in the City, where any person, firm, partnership, association, or corporation engages in or carries on or licenses to be engaged in or carried on any of the activities mentioned in B. or G. of this section for compensation.
- (i) Patron means any person who utilizes or receives the services of any establishment subject to the provisions of this article and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.
- (j) Recognized School means any school or institution of learning which has for its purpose the teaching of the theory, method, profession, or work of Massage Therapy, which school requires a resident course of study consistent with all the requirements put forth by the National Certification Examination for Therapeutic Massage and Bodywork before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning.

5-602. Massage Business license; required.

No person, firm, partnership, association or corporation shall perform Massage Therapy or operate a Massage Business, as defined in this article, without first having obtained a license from this City. Such license shall be valid only from January 1st to December 31st of each calendar year.

5-603. Massage Business license application; fee; transferability; renewal.

(a) Any person desiring a license to maintain or operate any Massage Business shall make an application to the City Clerk. Such application shall be verified and upon a form prepared by the City Clerk and shall contain:

1. The name, Social Security Number, address, and telephone number of each applicant and any operator;
2. The exact nature of the services to be provided;
3. The proposed place of business and facilities, including evidence of applicant's ability to secure a lease for the space and contact information for the landlord, where applicable;
4. Written proof that all establishment applicant(s) and all managers are at least 18 years of age by providing a copy of a current state or federal issued form of identification;
5. All stockholders holding more than ten percent of the stock of the corporation, any partner, when a partnership is involved, and any manager;
6. Business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application;
7. Fingerprints;
8. The Massage Therapy business license history of the applicant; whether such person, in previously operating in this or another City or State under license, has had such license revoked or suspended, the place and the reasons, and the business activity or occupation subsequent to such action of suspension or revocation;
9. Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and the circumstances;
10. Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and qualifications of the applicants for the license;
11. A copy of the State of Kansas Certificate of Good Standing, where applicable; and
12. A fully completed application for a Certificate of Occupancy, where applicable.

(b) In the case of any establishment applicant who intends to personally provide massage therapy services at the establishment, or to personally provide off-premises or in-office massage, each such applicant must also apply for and receive a massage therapist license as provided in this article.

- (c) Each applicant under this article shall pay an initial filing fee to the City Clerk in an amount set by resolution of the governing body from time to time. Such fee shall not be refundable or prorated.
- (d) No Massage Business licenses are transferable, separate or divisible, and such authority as a license confers shall be conferred only on the licensee named therein.
- (e) Upon submission of a request for renewal on a form provided by the City and a fee, an expiring massage therapy establishment license may be renewed by the City Clerk if there has been no change in ownership. Such fee will be adopted by the Governing Body by resolution. All requests for renewal must be received by the City at least thirty (30) days prior to the expiration of the license. The City will make reasonable efforts to notify licensees of an upcoming expiration of a license, but the City's failure to provide such notice or the failure to receive such notice shall not relieve the licensee from the requirement to file all required renewal paperwork at least thirty (30) days prior to expiration of the current license.
- (f) If the renewal request is not received at least thirty (30) days prior to the expiration, the City Clerk may be unable to process the renewal request prior to the expiration of the license. The renewal form will require a notarized statement that there have been no criminal offenses (except minor traffic violations) charged against the applicant or criminal offenses charged on, against or related to the massage therapy establishment within the preceding twelve (12) months.
- (g) No suspended license will be renewed. If a suspended license lapses during a suspension period, a new application for a massage therapist license may only be filed upon the expiration of the period of suspension.

5-604. Massage Business license issuance.

- (a) After the filing of an application in the proper form, the City Clerk shall examine the application, and after such examination, shall issue a license for a Massage Business unless the City Clerk finds that:
 1. The correct fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation;
 2. For a Massage Establishment, the operation, as proposed by the applicant, if licensed, would not comply with all applicable laws, including, but not limited to, the City's building, zoning and health regulations. A Massage Establishment as an accessory use may be licensed in the Commercial, Downtown Commercial, or Residential zoning districts. This section does not apply to an Off-Premises Massage Business.
 3. The applicant, if an individual; or any of the stockholders holding more than ten percent of the stock of the corporation, any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, have been convicted of any crime that includes:
 - i. A person felony, as defined by Kansas law;
 - ii. A non-person felony, as defined by Kansas law, in the ten (10) years immediately preceding the date of application;

- iii. Any offense involving sexual misconduct with children;
 - iv. Any offense under K.S.A. 21-3436 and amendments thereto that is defined as an inherently dangerous felony;
 - v. Any sex offense that falls under article K.S.A Chapter 21, Article 35 and amendments; and
 - vi. Any offense under K.S.A. 59-29a02 and any amendments thereto that is identified as an act undertaken by a sexually violent predator.
4. The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the City in conjunction with;
 5. The applicant has had a Massage Business license, as defined in this article, or other similar permit or license denied, revoked, or suspended for any of the above causes by the City or any other state or local agency within five (5) years prior to the date of the application;
 6. Any establishment applicant or manager has previously been issued a license for an adult entertainment business or escort service or has been employed by any such establishment.
 7. The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, is not over the age of eighteen (18) years;
 8. The manager or other person principally in charge of the operation of the business would be ineligible to receive a license under the provisions of this article.
- (b) Any license issued under the provisions of this article to the applicant of a Massage Establishment, shall at all times be displayed by the licensee in an open and conspicuous place on the premises where the licensed business is conducted.
- (c) Any license issued under the provisions of this article to the applicant of an Off-Premises Massage Business, shall be openly displayed at all times while Massage Therapy services are being rendered to the patron.

5-605. Massage Business license; inspection.

Any massage business license issued under the provisions of this article must be displayed at all times by the licensee in an open and conspicuous place in the massage establishment.

5-606. Massage Business license suspension.

- (a) Any license issued for a Massage Business may be suspended by the Governing Body after a public hearing before the Governing Body where it is found:
1. that any of the provisions of this article are violated; or
 2. where the licensee or any employee of the licensee, including a Massage Therapist, has been charged with any offense found in Section 5-604 of this article; or

3. in any case, where the licensee refuses to permit any duly authorized Police Officer, Fire Inspector, or the Codes Administration Division of the City to inspect the premises or the operations therein.
- (b) The Governing Body, before suspending any license, shall give the licensee at least ten (10) days' written notice of the charges against him and the opportunity for a public hearing before the Governing Body, at which time the licensee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing. The decision of the Governing Body or designated representative is final.
 - (c) A suspension based on a charged criminal offense is effective until a court of competent jurisdiction rules on the criminal offense.

5-607. Massage Business license revocation.

- (a) Any license issued for a Massage Business may be revoked by the Governing Body after a public hearing before the Governing Body where it is found:
 1. that any of the provisions of this article are violated;
 2. or where the licensee or any employee of the licensee, including a Massage Therapist, has been convicted of any offense found in Section 5-604 of this article and the licensee has actual or constructive knowledge of the violation or conviction;
 3. or in any case, where the licensee refuses to permit any duly authorized Police Officer, Fire Inspector, or the Codes Administration Division of the City to inspect the premises or the operations therein.
- (b) The Governing Body, before revoking any license, shall give the licensee at least ten (10) days' written notice of the charges against him and the opportunity for a public hearing before the Governing Body, at which time the licensee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing. The decision of the Governing Body or designated representative is final.

5-608. Massage Therapist license; required.

- (a) No person shall perform massage therapy, as defined in this article, in a massage establishment, or in an in-office or off-premises setting, without first having obtained a license therefor, issued by the City. It is unlawful to perform such services unless the license issued is current, unrevoked and not suspended.
- (b) A massage therapist must be employed by a Massage Business licensed in the City. A licensed massage therapist must immediately notify the City Clerk in writing, within thirty (30) days, of any change in information concerning the licensee's original application.

5-609. Massage Therapist qualifications; exemption.

- (a) Any person, including an applicant for a massage business license, who engages or intends to engage in the practice of massage therapy as defined in this article, shall upon making application for a license, supply the following:

1. name and address of the recognized school attended,
2. the date attended, and
3. a copy of the diploma or certificate of graduation showing that the applicant has successfully completed a minimum of five hundred (500) hours of instruction in massage therapy.

In lieu of the required five hundred (500) hours, proof that the applicant has passed the National Certification Examination for Therapeutic Massage and Bodywork will be accepted as proof of fulfillment of this requirement of completion of a course of instruction.

- (b) Every applicant for a license or a renewal of any said business wishing to practice massage therapy described in this article must have successfully completed certification in American Red Cross first aid and American Heart Association CPR or equivalent.
- (c) Individuals licensed with the City as a massage therapist for at least five (5) consecutive years as of the effective date of this article may renew that license notwithstanding an inability or failure to satisfy the minimum education requirements set forth above, and continue to renew such license so long as there are no lapses in active licensure and the individual continues to satisfy all other requirements of this article.

5-610. Massage Therapist license application; fee; transferability; renewal.

- (a) Any person desiring a massage therapist license shall make an application to the City Clerk. Such application shall be verified and upon a form prepared by the City Clerk and shall contain:
 1. Name, Social Security Number, address, and telephone number;
 2. Applicant's weight, height, color of hair and eyes, and fingerprints;
 3. Written evidence that the applicant is at least eighteen (18) years old;
 4. Business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application;
 5. Whether such person has ever been convicted of any crime except minor traffic violations; if any person mentioned in this subdivision has been so convicted, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction;
 6. The position or function the applicant is being hired to perform within such massage business;
 7. A copy of a valid government-issued identification card;
 8. The licensed massage business where the therapist will be employed;
 9. Authorization for the City, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and qualifications of the applicant for the license; and

10. Proof of satisfaction of the massage therapist qualifications set forth in this article.

- (b) Each applicant under this article shall pay an initial filing fee to the City Clerk in an amount set by resolution of the governing body from time to time. Such fee shall not be refundable or prorated.
- (c) No massage therapist licenses are transferable, separate or divisible, and such authority as a license confers shall be conferred only on the licensee named therein.
- (d) In the case of any establishment applicant who intends to personally provide massage therapy services at the establishment, or to personally provide off-premises or in-office massage, each such applicant must also apply for and receive a massage therapist license as provided in this article.
- (e) Upon submission of a request for renewal, on a form provided by the City, and a fee, an expiring massage therapist license may be renewed by the City Clerk. Such fee will be adopted by the Governing Body by resolution. All requests for renewal must be received by the City at least thirty (30) days prior to expiration of the license. The City will make reasonable efforts to notify licensees of an upcoming expiration of a license, but the City's failure to provide such notice or the failure to receive such notice shall not relieve the licensee from the requirement to file all required renewal paperwork at least thirty (30) days prior to expiration of the current license. If the renewal request is not received at least (30) days prior to expiration, the City Clerk may be unable to process the renewal request prior to the expiration of the license. The renewal form will require a notarized statement that the applicant has not been charged with any criminal offense (except minor traffic violations) within the preceding twelve (12) months.
- (f) No suspended license will be renewed. If a suspended license lapses during a suspension period, a new application for a massage therapist license may only be filed upon the expiration of the period of suspension.

5-611. Massage Therapist license issuance.

The City Clerk shall issue a Massage Therapist license within twenty-one (21) days following application unless he/she finds that:

- (a) The applicant for the Massage Therapist license has been convicted of:
 - 1. A person felony, as defined by Kansas law;
 - 2. A non-person felony, as defined by Kansas law, in the ten (10) years immediately preceding the date of application;
 - 3. An offense involving sexual misconduct with children;
 - 4. Any offense under K.S.A. 21-3436 and amendments thereto that is defined as an inherently dangerous felony;
 - 5. Any sex offense that falls under K.S.A. Chapter 21, Article 35 and amendments thereto;and

- 6. Any offense under K.S.A. 59-29a02 and any amendments thereto that is identified as an act undertaken by a sexually violent predator.
- (b) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith;
- (c) That the correct license fee has not been tendered to the City, and in the case of a check or bank draft, honored with payment upon presentation;
- (d) In the case of a Massage Therapist, that the applicant has not successfully completed a resident course of study or learning from a recognized school under the provisions of this article.

5-612. Massage Therapist license; inspection.

All or any employees issued a license by the City Clerk under the provisions of this article shall, at all times when providing Massage Therapy subject to the provisions of this article, have in the possession a valid Massage Therapist's license.

5-613. Massage Therapist license suspension.

- (a) Any license issued for a Massage Therapist may be suspended by the Governing Body after a public hearing before the Governing Body where it is found:
 - 1. that any of the provisions of this article are violated; or
 - 2. where the licensed Massage Therapist has been charged with any offense found in Section 5-610 of this article; or
 - 3. in any case, where the licensee refuses to permit any duly authorized Police Officer, Fire Inspector, or the Codes Administration Division of the City to inspect the premises or the operations therein.
- (b) The Governing Body, before suspending any license, shall give the licensee at least ten (10) days' written notice of the charges against him and the opportunity for a public hearing before the Governing Body, at which time the licensee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing. The decision of the Governing Body or designated representative is final.
- (c) A suspension based on a charged criminal offense is effective until a court of competent jurisdiction rules on the criminal offense.

5-614. Massage Therapist license revocation.

- (a) Any license issued for a Massage Therapist may be revoked by the Governing Body after a public hearing before the Governing Body where it is found:
 - 1. that any of the provisions of this article are violated; or
 - 2. where the licensed Massage Therapist, has been convicted of any offense found in Section 5-610 of this article and the licensee has actual or constructive knowledge of the violation or conviction; or

3. in any case, where the licensee refuses to permit any duly authorized Police Officer, Fire Inspector, or the Codes Administration Division of the City to inspect the premises or the operations therein.
- (b) The Governing Body, before revoking any license, shall give the licensee at least ten (10) days' written notice of the charges against him and the opportunity for a public hearing before the Governing Body, at which time the licensee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing. The decision of the Governing Body or designated representative is final.

5-615. Student Massage Therapist.

An individual actively enrolled in and currently attending classes in a course of instruction in the theory, method or practice of massage, may provide massage therapy as a practicum component of the training program, provided the following conditions are met:

- (a) The massage therapy is under the supervision of a licensed massage therapist. For the purposes of this Section, supervision means the supervising therapist is observing the student providing massage therapy on a patron.
- (b) All advertisements for massage therapy that will be provided by a student must clearly inform the patron that the massage therapy will be provided by a student under the supervision of a licensed massage therapist.
- (c) Prior to providing massage therapy, the student massage therapist will require the patron to sign an acknowledgment that he/she has been informed the massage therapy will be provided by a student under the supervision of a licensed massage therapist. These acknowledgment documents will be maintained by the supervising massage therapist for a period of one (1) year and will be produced at the request of any health official or police officer.
- (d) All student massage therapy must occur at a licensed massage establishment in the Commercial or Downtown Commercial zoning districts or as a component of Off-Premises or In-Office Massage Therapy.
- (e) No student massage therapist may receive any consideration whatsoever for providing massage therapy.

Concurrent with these special restrictions, the student must comply with all parts of Chapter 5-

- (f) 619 regarding the behavior, activities and restrictions of Massage Therapy employees.

5-616. Massage Establishment regulations.

- (a) The operation of any massage therapy establishment will be subject to the following regulations:
 1. The licensee will have the massage therapy establishment supervised at all times when open for business by himself/herself or an operator. The licensee or operator will personally supervise the establishment and will not violate or permit others to violate any applicable provision of this Chapter.
 2. Every licensee will at all times be responsible for the conduct of business on the licensed massage therapy establishment premises and for any act or conduct of

an operator, massage therapist or employee, which constitutes a violation of the provisions of this Chapter. Any violation of the city, state or federal laws committed on the licensed premises by any licensee, operator, massage therapist or employee affecting the eligibility or suitability of the licensee to hold a license, may be grounds for suspension or revocation of same.

3. The massage therapy establishment will be closed and operations will cease between the hours of 10:00 pm and 6:00 am.
4. No alcoholic or cereal malt beverages, nor the possession or consumption thereof, will be allowed in or upon the massage therapy establishment premises.
5. All licensees, operators, massage therapists and employees will wear outer garments while at the establishment. Diaphanous or transparent clothing is prohibited. All licensees, operators, massage therapists and employees must be fully clothed at all times.
6. A licensed establishment must be kept clean and operated in a sanitary manner.
7. A patron's pubic region, genitals, perineum, anal region, and/or the female breast must be covered at all times by opaque towels, sheets, cloths or undergarments when in presence of a licensee, operator, massage therapist or employee.
8. Any contact by a licensee, operator, massage therapist or employee with a patron's pubic region, genitals, perineum, anal region, and/or the female breast is prohibited.
9. Clean, laundered sheets and towels will be provided to patrons for use. Such items will be laundered after each use thereof and stored in a sanitary manner.
10. Wet and dry heat rooms, showers, and other bathing compartments, and toilet rooms will be thoroughly cleaned each day the massage therapy establishment is in operation. Bathtubs or individual soaking areas will be thoroughly cleaned after each use.
11. Table showers are strictly prohibited.
12. Toilet facilities shall be provided in convenient locations. When five (5) or more Massage Therapists and patrons of different genders are on the premises at the same time, multiple toilet facilities shall be provided.
13. Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap in a dispenser and with sanitary towels.
14. All massage therapy establishments and/or operators of massage therapy establishments will keep and maintain on the premises a current register of all massage therapists showing each individual's name, home address, telephone number, license number and a copy of the therapist's license and government-issued identification. Such register will be open to inspection during business hours by any health official or police officer.
15. All operators of a massage therapy establishment will keep a daily register at the massage therapy establishment of all patrons listing the location type, each patron's first and last

name, home address or phone number. All registers maintained pursuant to this provision shall be open for inspection by any City representative with consent, exigency, or pursuant to an administrative search order or subpoena. Each year's register shall be kept on file for one (1) year after the completion of the year.

16. No massage therapy establishment operator or employee will place, publish, distribute or cause to be placed, published or distributed, any advertisement offering or suggesting the availability of any service which is either prohibited or not authorized under this article.
17. No individual shall reside, inhabit or otherwise sleep overnight at an establishment with the exception of a licensee who operates an establishment in his/her home or residence. With respect to licensees who operate an establishment out of his/her home or residence, no individual living in the home or residence shall reside, inhabit or otherwise sleep in the portion of the home or residence that is devoted to the practice of massage therapy.
18. No operator or employee will permit the provision, offer to provide or provide to any patron any service with the intent to arouse or gratify the sexual desires of the operator, massage therapist, employee or patron.
19. An establishment can be operated from the massage therapist's home or residence provided that the location is properly licensed as a massage establishment and otherwise complies with this article and the City's home occupation requirements set forth in Section 7 of the City's zoning regulations.

(b) The City Clerk may, after a public hearing make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this article.

5-617. Off-Premise Massage Business regulations.

- (a) The operation of any Off-Premise Massage Business shall be subject to the following regulations:
1. Massage Therapy performed at a patron's residence is limited to the hours between 6:00 am and 9:00 pm.
 2. No service shall be given which is clearly dangerous or harmful in the opinion of the Director of the County Department of Health to the safety or health of any person, after such notice in writing to the licensee from such director;
 3. All businesses licensed under the provisions of this article shall at all times be responsible for the conduct of any Massage Therapist and any act which constitutes a violation of the provisions of this article; any violation of the City, state, or federal laws committed by any such licensee or Massage Therapist affecting the eligibility or suitability of such person to hold a license may be grounds for suspension or revocation of the Massage Therapist License or Massage Business License;
 4. All Massage Therapists shall be clean and wear clean outer garments which use is restricted to the licensed Massage Business.
 5. All Massage Therapists must be modestly attired; diaphanous, flimsy, transparent, form fitting, or tight clothing is prohibited; clothing must cover the Massage Therapists' chests

at all times; hemlines of skirts, dresses, or other such attire may be no higher than the top of the knee;

6. The private parts of patrons must be covered by towels, cloths, or undergarments when in the presence of a Massage Therapist; any contact with a patron's genital area is strictly prohibited; and
 7. All licensed establishments, when applicable, shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in approved, sanitary manner
- (b) The City Clerk may, after a public hearing make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this article.

5-618. In-Office Massage regulations.

The authority granted a licensee for In-Office massage is limited to the authority to conduct Massage Therapy on the business premises of the licensee's patrons. In-Office Massage Therapy is limited to the area above the patron's waist.

5-619. Massage Therapist regulations; patron register.

Massage therapists are subject to the following regulations when providing services:

- (a) The massage therapist will not violate any applicable provision of this Chapter.
- (b) Massage Therapy is limited to the hours between 6:00 am and 9:00 pm.
- (c) A massage therapist will not consume any alcoholic or cereal malt beverages during business hours or while providing massage therapy.
- (d) Any violation of the city, state or federal laws committed by a therapist affecting his/her eligibility or suitability to hold a license may be grounds for suspension or revocation of same.
- (e) All massage therapists shall be clean, and wear clean, modest outer garments while providing massage therapy. Diaphanous or transparent clothing is prohibited. The massage therapist must be fully clothed at all times.
- (f) A patron's pubic region, genitals, perineum, anal region, and the female breast must be covered at all times by opaque towels, sheets, cloths or undergarments when in the presence of the massage therapist.
- (g) Any contact by a massage therapist with a patron's pubic region, genitals, perineum, anal region, and/or the female breast is prohibited.
- (h) Table showers are strictly prohibited.
- (i) A massage therapist will not provide or permit any massage therapy to be provided to a patron under the age of eighteen (18) unless the patron is accompanied to the massage therapy establishment by a parent or legal guardian, and the parent or legal guardian authorizes the massage therapy in writing.

- (j) No massage therapist will place, publish, distribute or cause to be placed, published or distributed, any advertisement offering or suggesting the availability of any service which is either prohibited or not authorized under this article.
- (k) A massage therapist will notify the City Clerk of any change in massage therapy establishment employment within thirty (30) calendar days of the change.
- (l) No massage therapist will permit the provision, offer to provide or provide to any patron any service with the intent to arouse or gratify the sexual desires of the massage therapist or patron.
- (m) All therapists shall keep and maintain a register of services provided as in-clients' office or in-clients' home massage, listing the location type, each patron's first and last name, home address or phone number. All registers maintained pursuant to this provision shall be open for inspection by any City representative with consent, exigency, or pursuant to an administrative search order or subpoena. Each year's register shall be kept on file for one (1) year after the completion of the year.

5-620. Inspections; prior-to and during operations.

- (a) Prior to approval of an establishment application, the City will conduct a Health and Safety inspection of the final establishment set up. The City will confirm that the establishment set up complies with the requirements of this article.
- (b) In addition, and as applicable, a building and/or fire safety inspection will be conducted of the premises. The license will not be approved, and the establishment will not be able to conduct business, until and unless the establishment has successfully completed all required inspections within ninety (90) days of filing the application. If all inspections are not successfully completed within this timeframe the application will be denied.
- (c) If an inspection is scheduled and the establishment applicant (or representative) fails to be present, a re-inspection fee will be assessed.
- (d) Once a massage business is in operation, City representatives may, from time to time, conduct an inspection of each licensed establishment, or into In-Office or Off-Premises locations where a therapist provides services in this City, for the purposes of determining that the provisions of this article are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. Prior notice of the City's intention to conduct such inspections is not required. It shall be unlawful for any licensee to fail to allow immediate access to the premises or to hinder an inspection in any manner, and any such behavior by the licensee or manager shall result in revocation or suspension of the establishment license.

5-621. Otherwise licensed businesses.

Businesses which provide massage therapy services as an accessory service to the predominant business purpose of the establishment, and which are categorized and qualified to operate by the City under a different business license type, must complete and provide all documentation required of a massage therapy establishment. Otherwise licensed businesses will be subjected to annual inspections of the business to ensure they are in compliance with this Chapter. Otherwise licensed business will not be subject to any establishment fees other than reinspection fees.

5-622. Change of location; employment.

For up-to-date recordkeeping, a massage therapist shall notify the City of any change in employment within thirty (30) calendar days of the change. This shall include a change in the therapist's employer, or the addition or reduction of location types (i.e. establishment, In-Office, or Off-Premises). The therapist will be required to get a new license from the City and pay all applicable fees.

If a licensee desires to change the location of the massage therapy establishment, the licensee will file an application with the City Clerk providing the same information relating to the proposed location as in the case of an original application. If the application is in proper form and complies with applicable zoning requirements of the UDO and all other requirements relating to the massage therapy establishment are met, a new license will be issued for the new location for the balance of the year for which a current license is held by the licensee. The licensee will be required to get a new license from the City and pay all applicable fees.

5-623. Exceptions.

The provisions of this article shall not apply to the following:

- (a) Medical doctors, chiropractors, osteopaths, physical therapists, nurses, barbers, and cosmetologists as to massage of the scalp, who are licensed to practice their respective professions in Kansas or who are licensed to practice temporarily under the auspices of an associate or establishment duly licensed in Kansas while in the course of their licensed business or profession.
- (b) Services provided in a hospital, nursing home, assisted living facility, or sanitarium.

SECTION III. That Chapter V, Article 7 of the Code of the City of Eudora, Kansas, is hereby added to read as follows:

ARTICLE 7. MOBILE FOOD VENDORS

5-701. Definitions.

For the purpose of this ordinance, the following words shall be considered to have the following meanings:

- (a) Mobile Food Vendor shall mean any person, corporation, association, or other entity, however organized, that offers any food or beverage for sale from a Mobile Food Unit.
- (b) Mobile Food Unit shall mean any self-contained vehicle, trailer, cart, wagon, or other type of conveyance from which any food and/or beverage is offered for sale.
- (c) City-Approved Event shall mean any event sanctioned by a Permit issued by the City, including but not limited to a Special Event Permit.

(Code _____)

5-702. License required.

It shall be unlawful for any person to engage in any of the activities defined in the preceding sections of this ordinance, within the corporate limits of the city without then having an unrevoked and unexpired license therefor in his or her possession and issued by the City Clerk.

(Code _____)

5-703. Same; application required.

Before the City Clerk may issue any license required by this ordinance, he or she shall require an application in writing on a form to be supplied by the City Clerk which shall give the following information:

- (a) Full legal name and date of birth of applicant;
- (b) Name under which the Mobile Food Unit does business (dba name) and, if applicable, the registered name of the legal entity owning the Mobile Food Unit;
- (c) Permanent address, business mailing address, email address, and telephone number of applicants;
- (d) Proof of a valid driver's license for operation of the class of vehicle or vehicles identified in the application to be used in the business for the applicant and any agents or employees of the applicant who will be involved in driving the identified vehicle or vehicles;
- (e) Identification of vehicle used by applicant in conducting his or her business including the name and address of the owner; the type, make, and vehicle identification number; license plate number; and a photograph of the Mobile Food Unit;
- (f) A brief description of the nature of the business to be carried on or the goods to be sold and the length of time such applicant has been engaged in the business;
- (g) Proof of valid Kansas food truck sales tax registration certificate;
- (h) Proof of valid Kansas Food Service Establishment License, when applicable;
- (i) Proof of general liability insurance in the amount of \$500,000 or more;
- (j) A statement that when the Mobile Food Unit associated with the license application herein is not in use, it will be stored or parked in compliance with all ordinances and regulations of the City of Eudora and that failure by the applicant to legally store the Mobile Food Unit may result in the suspension or revocation of the applicant's license;
- (k) A statement that no person whose duties include working upon the premises of the Mobile Food Unit is a registered sex offender, and that applicant has, subject to audit, performed the necessary background check of all such persons to ensure that the statement is correct.
- (l) The applicant's signature acknowledging that he or she is familiar with the provisions of this chapter and is complying and will comply with all requirements set forth within; and that all of the information provided in the application is true and correct.

(Code _____)

5-704. Same; license fee.

At the time of filing the application, each applicant under this article shall pay an initial filing fee to the City Clerk in an amount set by resolution of the governing body from time to time. Such fee shall not be prorated or refunded for any reason, including denial of an application or revocation of a license.

(Code _____)

5-705. Term; copies issued and transferability.

- (a) Licenses issued under this ordinance shall be valid for a period not to exceed one year and shall expire on December 31 of the year in which it is issued.
- (b) In the event that a licensed Mobile Food Vendor begins using a Mobile Food Unit that was not identified in an application for the Mobile Food Vendor's License, the Mobile Food Vendor shall, before using said Mobile Food Unit, present to the City Clerk a photograph of the Mobile Food Unit, the license plate number, and a copy of the original Mobile Food License. Upon receipt of that information, the City Clerk shall issue to the licensee an official copy of the Mobile Food License for the new Mobile Food Unit.
- (c) No Mobile Food Vendor's License issued in accordance with the provisions of this ordinance shall be used by any person other than the person, corporation, association, or other entity, however organized, to whom it was issued.

(Code _____)

5-706. Denial, revocation or suspension of license; notice.

(a) The City Clerk or Chief of Police may deny any application, or may revoke, or suspend for a period of not to exceed 30 days, any license issued under this ordinance, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for license.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business.
- (3) Any violation of this ordinance.
- (4) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the city.
- (5) The applicant has had a Mobile Food Vendor's License revoked by the City for any reason within two years prior to the application date.

(b) Notice of the denial, revocation or suspension of a license shall be given in writing to the applicant or mailed to his or her last known address and the City Clerk shall set forth the grounds of such denial, revocation or suspension.

(Code _____)

5-707. Appeal to governing body.

(a) Any person aggrieved by the action of the Chief of Police or City Clerk in the denial of an application or revocation or suspension of a license as provided in this ordinance, shall have the right of appeal to the governing body.

(b) Such appeal shall be taken by filing with the City Clerk within 14 days after notice of revocation, suspension or denial of the license has been given to or mailed to such applicant's last known address and setting forth the grounds for appeal.

(c) The governing body shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided herein for notice of denial, revocation or suspension.

(d) The decision and order of the governing body on such appeal shall be final and conclusive.
(Code _____)

5-708. Regulations.

(a) It shall be unlawful for any licensee to make false or fraudulent statements concerning the quality of nature of his or her goods, wares and merchandise for the purpose of inducing another to purchase the same.

(b) Licensees are required to exhibit their license in a conspicuous place inside the vehicle used for mobile food vending at all times that the Mobile Food Unit is engaged in any of the activities licensed by this Article. Such license must be current and may be used only by the licensee.

(c) Mobile Food Vendors are prohibited from operating during the hours of 12:00 a.m. (midnight) to 6:00 a.m.

(d) Signage mounted on the side of a Mobile Food Unit shall not exceed the dimensions of the Unit by more than one (1) foot in any direction and any separate signs shall be compliant with the provisions of the City's zoning regulations relating to signage.

(e) No flashing lights are permitted on the Mobile Food Unit. No direct light from a Mobile Food Unit may be shined on adjacent property or cause a glare or distraction for vehicles, bicycles, or pedestrians.

(f) The exterior of all Mobile Food Units shall be maintained in good repair, shall be sound, shall be free from peeling or flaking paint, and shall be clean and sanitary so as not to pose a threat to the public health, safety, and welfare.

(g) All mobile food vendors are subject to on-site fire safety inspections and shall comply with the following requirements:

(1) General Safety & Cooking Operations

A. Portable fire extinguishers have been properly selected and installed in the kitchen cooking areas;

B. Where solid fuel cooking appliances produce grease laden vapors, appliances shall be protected by listed fire extinguishing equipment;

- C. A working carbon monoxide detector is present;
 - D. Cooking equipment shall not be left unattended while still hot;
 - E. Cooking equipment shall be operated when all windows, service hatches, and ventilation sources are fully opened; and
 - F. Cooking equipment and ventilation system shall be kept clean by regularly removing grease.
- (2) Vehicle Power
- A. Engine-driven powered vehicles shall require 10ft clearance in all directions from openings and air-intakes as not to accumulate exhaust; and
 - B. Engine-driven powered vehicles shall direct exhaust away from all buildings.
- (3) Cooking Fuels
- A. When using propane, main gas shutoff for all containers is readily accessible and portable gas containers are in the upright position and secured to prevent tipping over; and
 - B. When using solid fuel, ash, cinders, and other fire debris should be removed from the firebox at regular intervals and at least once a day; and removed ashes, cinders, and other removed fire debris should be placed in a closed metal container with at least three feet clearance from any combustible materials.

(Code _____)

5-709. Location; use of streets and sidewalks.

Mobile food vendors may vend on property within the city subject to the following:

(a) Mobile Food Vendors may not be parked or operate on public or private property where the Unit, signage, a line of customers or any other aspect of the Unit’s operation would: (1) hinder the flow of traffic on any street, (2) hinder the flow of bicycles within any bike lane or route, (3) hinder the flow of pedestrians along any sidewalks, (4) block or reduce to less than five (5) feet in width any accessible route to persons with disabilities, or (5) block or obstruct access to any driveway or access point to any property. Provided, however, this provision shall not apply when a Mobile Food Unit is operating on a street that is closed pursuant to a valid Special Event Permit, subject to Chapter 5 Article 4 of this Code.

(b) For fire safety purposes, a Mobile Food Unit that is utilizing flammable liquids or gases shall maintain a minimum separation distance of ten (10) feet from any other Unit and a minimum separation distance of ten (10) feet from any building openings such as doors and windows.

(c) No Mobile Food Vendor shall vend on public property within 150 feet as measured from the front door of any restaurant which is open for business unless authorized in writing by the owner or manager of any such restaurant. Such written authority to operate within 150 feet of a restaurant or restaurants shall be maintained on the premises of the Mobile Food Unit at all times it is operating pursuant thereto and produced upon request by the Chief of Police or designee or other public officer authorized to enforce the provisions of this Article.

(d) No Mobile Food Vendor shall vend on public property within 500 feet of the location for which a community event permit has been issued during the hours of the event as specified in the event permit, unless authorized in writing by the event promoter. Distance shall be measured from the boundary of the event footprint nearest to the location proposed to be used for mobile food vending. Any written authority to operate within 500 feet of a community event shall be maintained on the premises of the Mobile Food Unit at all times it is operating pursuant thereto and produced upon request by the Chief of Police or designee or other public officer authorized to enforce the provisions of this Chapter.

(e) Every Unit shall be stationary while vending.

(f) Whenever any vehicle is used for mobile food vending upon a street, alley, sidewalk or other public right-of-way within the City, such vehicle must be legally parked and no Mobile Food Vendor shall sell any food to any person standing in the street. Within the Downtown Commercial zoning district, parallel parking in angled spots is permitted provided consent is received from the property owner, manager, tenant or other person in charge of all properties within 50 feet of the Mobile Food Unit. Provided, however, this provision shall not apply when a Mobile Food Unit is operating on a street that is closed pursuant to valid Special Event Permit, subject to Chapter 5 Article 4 of this Code.

(g) All Mobile Food Vendors operating on private property or on public property other than public right-of-way shall acquire the written permission of the property owner, manager, tenant or other person in charge of the property allowing the use and location of the Mobile Food Unit on said property. For public property owned by the City of Eudora, written permission shall be obtained from the City Manager or designee. Any written permission required by this subsection shall be kept on the premises of the Mobile Food Unit and produced upon request by the Chief of Police or designee or other public officer authorized to enforce the provisions of this Article.

(h) The City may, subject to the Use Permitted Upon Review process as stated in Section 6 of the City's zoning regulations, approve a Mobile Food Unit as a permanent or seasonal element of a site upon such application to the Codes Administrator.

(i) Whenever a Mobile Food Vendor operates on streets classified as residential, written permission shall be obtained from the City Manager or designee prior to parking and selling.
(Code _____)

5-710. Right to close or relocate a Mobile Food Vendor.

Any law enforcement officer has the right to close down or request a Mobile Food Unit to relocate, where, in the opinion of such officer, the Mobile Food Unit is causing or contributing to an imminent public safety hazard. Such hazards shall include, but not be limited to, situations where the operation of a Mobile Food Unit is causing a traffic hazard, a fire hazard, is impeding free or uninterrupted passage of vehicles and/or pedestrians upon public streets, sidewalks, or alleyways, selling food or beverages that are not safe for human consumption or operating a Mobile Food Unit without the license required by this Article.

(Code _____)

SECTION IV. That Chapter V, Article 8 of the Code of the City of Eudora, Kansas, is hereby added to read as follows:

5-801. Licensure of contractors.

All contractors are required to obtain a Eudora city contractor’s license to practice their trade within the City of Eudora and shall hold a valid license from a Kansas state, county, or municipal jurisdiction. All work shall be performed in compliance with all city standards including the obtaining of required building permits. The contractor’s license fee amount shall be set by the Governing Body from time to time. Penalties for violations of this Section shall be as set forth in Section 1-111 of the City Code, as amended.

(Ord 1053; Code 2016)

SECTION V. That all previous versions of the code sections amended by the foregoing are hereby repealed in their entirety, the intent of the City being that the foregoing amended code sections shall replace them in their entirety.

SECTION VI. This ordinance shall be in full force and effect from and after its adoption and publication as provided by law.

PASSED AND APPROVED this 24th day of June, 2019, by a majority of all of the members of the Governing Body of the City of Eudora, Kansas.

APPROVED:

Tim Reazin, Mayor

ATTEST:

Pamela Schmeck, City Clerk