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Gen. Ord. No. 47 - 12 - 13. By Alderperson VanderWeele.
January 21, 2013.

AN ORDINANCE repealing and recreating Article III of Chapter 30 of the Municipal Code relating to regulation and licensing of massage technicians and massage establishments.

WHEREAS, the State of Wisconsin has preempted municipal regulation and licensing of the practice of massage therapy and bodywork therapy through the creation of Chapter 460 of the Wisconsin Statutes.

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Article III entitled "Massage Parlors" of Chapter 30 of the Sheboygan Municipal Code is hereby repealed in its entirety and recreated to read as follows:

"Chapter 30 - BUSINESSES

. . .

ARTICLE III. MASSAGE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 30-96. Penalties for violation of article.

A violation of any of the provisions of this article shall subject the violator to a forfeiture of not less than \$50.00 and not more than \$200.00 and in default of payment thereof imprisonment for not to exceed 30 days.

Sec. 30-97. Inspection of licensed premises.

The licensed premises shall be open at all times to inspection by the police officers of the city and the building inspection division for the purpose of determining whether the premises and licensee are complying with the provisions of this article.

Sec. 30-98. Regulation of massage establishments.

- (a) *Supervision by therapist.* There shall be on the licensed premises at all times a massage therapist or bodywork therapist licensed under Chapter 460, Wis. Stats. The licensee of the establishment shall personally supervise the conduct of the

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business thereon and shall not violate or permit any therapist or employee in his employ to violate any provision of this article. A violation of any provision of this article by an officer, employee or therapist shall constitute a violation by the licensee of the establishment.

- (b) *Alcohol beverages.* No alcohol beverages shall be sold or used on the licensed premises.
- (c) *Hours of operation.* No licensed premises shall be open for business except between 8:00 a.m. and 10:00 p.m.
- (d) *Maintenance in sanitary condition.* All licensed premises shall be maintained in a clean and sanitary condition and in compliance with all city ordinances and state laws and regulations.
- (e) *Display of certificate.* The massage establishment license shall be conspicuously displayed in the licensed establishment so that the license can easily be seen and read.

Secs. 3-99 - 3-120. Reserved.

DIVISION 2. LICENSE

Sec. 30-121. Required for operation of establishment.

No person shall operate an establishment within the city where massage therapy or bodywork therapy is provided by one person to another for compensation without a license therefor.

Sec. 30-122. Exemptions.

No massage establishment license shall be required under this article where massage therapy or bodywork therapy is engaged in in the performance of the duties of their respective professions:

- (1) Hospitals, medical clinics, surgical centers, or offices of physicians, surgeons, chiropractors, osteopaths or physical therapists licensed or registered to practice their respective professions under the laws of the state, or nurses or nurse practitioners registered under the laws of the state acting under their discretion or control;

- (2) Barbershops and beauty parlors, provided such massage therapy or bodywork therapy, as practiced, is limited to the head and scalp.

Sec. 30-123. Fees.

The annual license fee for a massage establishment shall be \$100.00. Such license shall run from January 1 to December 31.

Sec. 30-124. Application.

Application for a license under this article shall be made on a form furnished by the city clerk, which shall contain the following information:

- (1) Name and address of the proposed massage establishment and the name and address of each individual who will have or has any financial interest, direct or indirect, in the proposed establishment;
- (2) Previous employment of every such individual for the preceding three years;
- (3) Date of birth of any such person;
- (4) Whether the applicant is a natural person, corporation, limited liability company, or partnership, and:
 - a. If the applicant is a corporation, the state where incorporated and the names and addresses of all officers and directors.
 - b. If the applicant is a partnership, the names and addresses of all partners.
 - c. If the applicant is a limited liability company, the names and addresses of all members.
 - d. The name of the manager or proprietor of the business.
 - e. Any other information that the clerk may reasonably require.
- (5) A statement as to whether the applicant, including an individual, agent, officer, director, member, partner, manager or proprietor has, within the previous ten years, been convicted of any crime, statutory violation punishable by forfeiture, or

county or municipal ordinance violation. If so, the applicant must furnish information as to the time, place, and offense of all such convictions.

- (6) Whether the applicant or any other person listed in subsection (5) above has ever used or been known by a name other than the name set forth on the application, and if so, the name or names used and information concerning dates and places used.
- (7) Whether the applicant or any other person listed in subsection (5) above has previously been denied, or had revoked or suspended, a massage establishment license or similar license from any other governmental unit. If so, the applicant must furnish information as to the date, location and reason for the action.
- (8) The names and addresses of all persons proposed to be employed therein.

Sec. 30-125. Investigation of application.

The city clerk shall refer the application to the police department which shall investigate and determine whether the applicant and the establishment proposed to be licensed conform to the requirements of this article. The police department shall refer the application to the building inspection division who shall investigate the premises proposed to be licensed to determine whether the premises conform to the requirements of this article, the rules and regulations of the department of health and social services, and any other applicable laws and ordinances. The police department and the building inspection division shall report their findings and recommendations to the city clerk for consideration by the common council.

Sec. 30-126. Grant; right of hearing upon denial.

The council shall grant or deny the application no later than 60 days after submittal of a completed application. If the application for a license is denied, the applicant shall be given written notice of the reasons for denial and shall be given an opportunity to be heard thereon.

Sec. 30-127. Suspension and revocation.

The common council may suspend or revoke a massage establishment license after notice and opportunity for hearing, for fraud, misrepresentation, or false statement contained in the application for a license, for a violation of any provision of this article, or subject to Sections 111.321, 111.322 and 111.335, Wis. Stats., upon conviction of an

offense the circumstances of which substantially relate to the operation of a massage establishment.

Secs. 30-128 - 30-160. Reserved."

Section 2. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Jodi VanderWeel

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I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the 4th day of February, 2013.

Dated February 7 2013. Susan Richards, City Clerk
Approved February 7 2013. Tony Van der Weel, Mayor

Proceedings Published February 11, 2013.

Ordinances Published February 11, 2013.

Certified February 14, 2013 to Atty.; Ord. Book; Code Book; Police Dept.