ORDINANCE NO. 050-18

AN ORDINANCE AMENDING THE CEDAR RAPIDS MUNICIPAL CODE
BY ENACTING A NEW CHAPTER 59 ENTITLED “MASSAGE THERAPY
BUSINESS LICENSE” REGARDING THE LICENSING OF MASSAGE
THERAPY BUSINESSES IN THE CITY OF CEDAR RAPIDS, IOWA

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR RAPIDS, IOWA,
as follows:

Section 1. The Cedar Rapids Municipal Code is hereby amended by adding a new
Chapter 59 as follows:

“MASSAGE THERAPY BUSINESS LICENSE

59.01 – DEFINITIONS.

The definitions and provisions contained in this section shall govern the construction, meaning,
and application of the following words and phrases used in this chapter.

1. “Applicant” means a person or business entity engaged in the process of applying to the City
   for a Massage Therapy Business License.

2. “License” means the privilege granted by the City to operate a Massage Therapy Business.

3. “Licensee” means a person to whom the City has granted a Massage Therapy Business
   License granting the privilege to operate a Massage Therapy Business at the location
   specified in the application and License.

4. “Massage Therapist” means a person licensed to practice the health care service of the
   healing art of Massage Therapy under Iowa Code Chapter 152C.

5. “Massage Therapy” means the performance of massage, myotherapy, masotherapy,
   bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot
   and cold applications, vibration and topical applications, or other therapy which involves
   manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to
   treat the muscle tonus system for the purpose of enhancing health, muscle relaxation,
   increasing range of motion, reducing stress, relieving pain, or improving circulation.

6. “Massage Therapy Business” means any business or place of business, including mobile,
   temporary, and transient businesses, wherein, or on whose behalf, any Massage Therapy is
   administered, advertised, practiced, used, given or applied.

7. "Person" means any natural individual, firm, partnership, trust, company, club, joint
   adventure, estate, association, or corporation or any group or combination acting as a unit
   and the individuals constituting such group or unit. As applied to partnerships or associations
   the word includes the partners or members thereof; and as applied to corporations it includes
   the officers, agents or employees thereof who are responsible for the act referred to. The
   singular includes the plural. The masculine gender includes the feminine and neutral
   genders.
8. “Placard” means a poster or sign for public display affixed to a structure stating that the occupation or use of the particular business or structure is illegal.

9. “City Manager” means the chief administrative officer of the City, or for purposes of this chapter, the City Manager’s designee.

59.02 – STATE AND CITY LICENSES REQUIRED.

1. No person shall operate a Massage Therapy Business, either exclusively or in connection with another business, without being licensed by the City as provided in this chapter.

2. No person shall perform Massage Therapy without a valid and current license to perform Massage Therapy issued by the Iowa Board of Massage Therapy and unless performed as part of a business with a current Massage Therapy Business License. Persons exempt from the provisions of Iowa Code Chapter 152C shall also be exempt from the requirement to have a valid Massage Therapy license.

3. Upon request by the City Manager, all individuals providing Massage Therapy shall provide a copy of their state Massage Therapy license.

59.03 – LICENSE FEE.

1. The fees for a Massage Therapy Business License in the City of Cedar Rapids will be set by City Council resolution. The fees shall be paid when an application for a License is filed.

2. An Applicant may be exempted from the City License application and renewal process if they provide proof that they have a valid Massage Therapy Business License from another Iowa municipality that engages in a similarly rigorous application, review, and renewal process, as determined by the City Manager, and the Applicant provides a copy of the license to the City Clerk. This proof of licensure must be made once every two-year period.

3. Unless revoked or suspended as provided in this chapter, Licenses will be issued for two-year terms beginning on March 1, 2019 and ending on the last day of February every two years after. If there is a material change in ownership, business name, or the services provided, the Licensee shall immediately submit an updated and revised Application.

4. Beginning on January 1 of the year in which a License is to end, the Licensee may apply to renew the License by the submittal of an application for renewal in the same manner as required for original issuance and the payment of a License fee as set by City Council resolution. Applications for renewal shall be available from the City Clerk.

59.04 – APPLICATION.

Application for a Massage Therapy Business License shall be made on forms provided by the City Clerk’s Office. The application shall include:

1. The business name, the address of the property to be used as a Massage Therapy Business, and documentation establishing the Applicant’s control of the premises on which the business will be located, which shall be in the form of a lease, deed, or other document that establishes the Applicant’s control.
2. At the time of application, the Applicant shall provide the following most current and updated information as requested below in a list format to be maintained at all times concerning the applicant, owner, manager and all employees, agents, contractors, or other persons, who are or will be present on the premises to perform Massage Therapy:

   a. Name and address for each individual;

   b. Current State of Iowa Massage Therapy license number for all individuals who are or will be present on the premises to perform Massage Therapy;

   c. License number of a valid and current government issued photo ID for each individual;

   d. Descriptions of all crimes not including traffic violations, including the time, place, date, and disposition for which these individuals have been charged, or convicted of criminal offenses, for the past ten years;

   e. Descriptions of all municipal or state civil infractions, including the time, place, date, and disposition for which these individuals have been a party to for the past ten years.

3. Dates and locations of other businesses or business locations the Applicant owns or operates, or has owned or operated, as a Massage Therapy Business.

4. A statement as to whether the Applicant, owner, manager, or any person providing Massage Therapy for or at the Massage Therapy Business has ever had any license to perform Massage Therapy denied, revoked or suspended in any city, county, state, or any country and the reason for the denial, revocation or suspension.

5. Such other information as the City Manager may require for purposes of conducting a background check should the City Manager determine a background check shall be performed. The City Manager may perform, or cause to be performed, a background check, including a nationwide background check, on any Applicant, owner, manager, or person identified in response to Section 59.04(2). The Applicant may be responsible for the additional expense to complete the background check. The City Manager shall inform the Applicant of the decision to perform the nationwide background check and of the additional related expense before the check is performed, and the Applicant will have the opportunity to withdraw their application before incurring said expense.

6. The Applicant shall designate an individual to act as the Registered Manager for the Massage Therapy Business; the Registered Manager shall be a resident of Iowa, and the Applicant shall provide the address and phone number of the Registered Manager. The Registered Manager shall provide written consent to serve as an agent for service of notices and other process related to the Massage Therapy Business. The Registered Manager shall remain responsible for the conduct of the Massage Therapy Business until another person has been designated in writing by the Applicant or Licensee. The Applicant or Licensee shall promptly notify the City in writing of any change in the Registered Manager designation and shall provide the address and phone number of the new Registered Manager and effective date of any such change.

7. In the event an Applicant or Licensee intends to operate a Massage Therapy Business in multiple physical locations, a separate application is required for each individual location.
59.05 – GRANTING OR DENIAL OF LICENSE.

1. Massage Therapy Business License applications shall be reviewed by the City Manager who, after considering all of the information provided in and with the application and obtained by any background checks, shall either grant or deny the License.

2. Whenever any application for a Massage Therapy Business License shall have been denied by the City Manager no new application covering the same Applicant or any principal, member, partner, or shareholder of the same or similar applicant, if not an individual, shall be filed with the Clerk until one year shall have elapsed from the date of filing the previous application.

59.06 – CONDITIONS GOVERNING ISSUANCE.

1. Licenses shall only be issued to Applicants who have provided all the information requested in the application, have paid the License fee, meet the requirements of this chapter, and do not meet any grounds for denial of applications under Section 59.08 of this chapter.

2. During the two-year License period, the Licensee shall immediately notify the City Manager in writing of any changes to employees or individuals who perform Massage Therapy at the Massage Therapy Business.

3. The Massage Therapy Business License shall be conspicuously displayed on the business premises in a public area at all times.

59.07 – EXEMPTIONS.

1. The following persons shall not be required to obtain a Massage Therapy Business License from the City:

   a. Businesses which primarily employ or provide the services of persons who are licensed to practice medicine or surgery, osteopathic medicine and surgery, chiropractic, or podiatry in this state; or athletic trainers, nurses, occupational therapists, physical therapists, or physician assistants licensed, certified or registered in this state or acting under the prescription or supervision of a person licensed to practice medicine, surgery, osteopathic medicine, or chiropractic in this state;

   b. Businesses which primarily employ or provide the services of persons who are licensed, registered, or certified in another state, territory, the District of Columbia, or foreign country when incidentally and temporarily present in this state to teach a course of instruction related to Massage Therapy and body work therapy;

   c. Persons providing Massage Therapy exclusively to members of their immediate family;

   d. Persons incidentally present in this state to provide services as part of an emergency response team working in conjunction with disaster relief officials.

2. If a business that is exempted from obtaining a License under the grounds listed in Section 59.07(1) operates a Massage Therapy Business through a business or location independent of the services described in the exemptions listed above, a License is required for the independent business or location. If a person who is exempted from obtaining a License under the grounds in Section 59.07(1) also performs Massage Therapy outside the conditions of the exemptions listed above, a License is required.
59.08 – ADVERSE ACTION; GROUNDS FOR DENIAL AND REVOCATION OR SUSPENSION.

1. It shall be grounds for denial of the application or for revocation or suspension of the License if:
   a. The Applicant, Licensee, their employees, or any individual who offers Massage Therapy at an Applicant or Licensee operated business has been charged or convicted for a sex crime as defined by Iowa Code Chapter 709, for Prostitution as defined by Iowa Code Chapter 657, or who is a registered sex offender under the Iowa Code;
   b. The Applicant or Licensee has been denied a license by any other municipality;
   c. The Applicant or Licensee has been found to have not complied with state laws or municipal ordinances that may adversely impact public health or safety;
   d. The Applicant, Licensee, or any individual who offers Massage Therapy at an Applicant or Licensee operated business, has solicited or advertised, or solicits or advertises to offer services that are in violation of this chapter;
   e. The Applicant, Licensee, or any individual who offers Massage Therapy at an Applicant or Licensee business was previously, or currently has been charged or convicted of violating any municipal, state, or federal law related to the licensed activity that occurred at a Massage Therapy Business premises;
   f. The application contains false information, intentionally fails to disclose required information, or was fraudulently or deceptively prepared or submitted;
   g. The Applicant, Licensee, or any of their employees, have previously, or currently has been charged or convicted for illegal control or possession of any narcotic drugs or controlled substance on the licensed premises;
   h. The Applicant, Licensee, or any individual performing Massage Therapy fails to provide any of the information or certifications required by this chapter;
   i. The Applicant or Licensee has permitted, or permits, an individual to conduct Massage Therapy without a State Board of Massage Therapy license at any business or premises owned or operated by the Applicant or Licensee;
   j. The Applicant or Licensee has conducted, or conducts, any business on premises in a manner that does not comply with Chapters 22, 22A, 29, or 32 of the Cedar Rapids Municipal Code;
   k. The Applicant or Licensee violates, or has violated, Chapters 22, 22A, 29, or 32 of the Cedar Rapids Municipal Code;
   l. The Applicant or Licensee has any unpaid fees or bills owed to the City of Cedar Rapids;
   m. The Applicant or Licensee has previously violated, or is currently in violation of provisions of this chapter or the Iowa Code relating to Massage Therapy.
59.09 – NOTICE OF DENIAL, REVOCATION, SUSPENSION, OR CORRECTIVE ACTION.

1. Upon a determination by the City Manager that a Licensee has failed to comply with the requirements of this chapter, the City shall issue a Notice of Violation to the Licensee. Service shall be provided in accordance with Section 59.14.

2. Upon receipt of the Notice of Violation, the Licensee shall immediately cease or remedy all violations of this chapter. If the violation cannot be remedied immediately, the Licensee may submit a corrective action plan to the City Manager within ten days of receiving the Notice of Violation. The Licensee’s corrective action plan shall specify the specific actions the Licensee will implement to ensure the violations in question do not continue. This will include a timeline for the corrective actions to become effective.

3. If the Licensee submits a corrective action plan, the Licensee or their Registered Manager will meet with the City Manager within seven business days to review the facts of the case and the corrective action contemplated by the plan. After the meeting and a review of the Licensee’s corrective action plan, the City Manager shall approve or deny the contents of the plan.

4. The submission of the corrective action plan may be considered by the City Manager as cause to delay corrective action taken by the City pursuant to Section 59.11.

5. If the Licensee fails to take immediate corrective action, fails to submit a corrective action plan, fails to submit a corrective action plan that is approved by the City Manager, or fails to meet the deadlines or requirements imposed by an approved corrective action plan, the City Manager may take corrective action against the Licensee, Massage Therapy Business, or the premises used by the same pursuant to Section 59.11.

59.10 – NOTICE OF VIOLATION; CONTENTS.

The notice of violation required by this chapter shall contain:

1. The name and location of the business in question;

2. The name of the Licensee, and Registered Manager;

3. A description of what constitutes a violation of this chapter;

4. A statement that the Licensee shall cure any violation of this chapter or submit a corrective action plan to the City Manager within ten days of receiving the Notice of Violation, or the business may face License suspension, License revocation, or that the City may placard the Massage Therapy Business premises related to the violations until the Licensee and Massage Therapy Business is in full compliance with this chapter;

5. A statement pursuant to Section 59.13 of this chapter, that any aggrieved party may seek administrative appeal within ten calendar days of receiving this Notice of Violation.

59.11 – CORRECTIVE ACTION BY THE CITY.

1. If a Licensee, who has been served with a Notice of Violation, fails to comply with the requirements of the Notice of Violation and/or Section 59.09, the City may take corrective action. Such corrective action may include the suspension or revocation of the Licensee’s Massage Therapy Business License or the placing of a placard on each entrance to the property and ensuring the property is secure from access. This provision shall not be construed to impose any duty upon the City to take such corrective action.
2. If the City placards the property, the Licensee shall be responsible for all of the costs incurred in taking such action.

3. If the City placards the property, it shall be illegal for any person to remove or alter the placard, or to access or operate out of the property without written permission of the City Manager. The City Manager may, for good cause, grant access to the placarded property to specific individuals for specific times and purposes.

4. If the City has probable cause that prostitution, as defined by Chapter 725 of the Iowa Code or Human Trafficking as defined by Chapter 710 of the Iowa Code, has occurred at a property providing Massage Therapy, the Police Department may placard the property. This action may be appealed pursuant to Section 59.13 of this code section.

59.12 – REINSTATEMENT OF LICENSE, REMOVAL OF PLACARD.

1. If a License has been suspended and the City Manager determines that the Licensee and Massage Therapy Business has remedied all violations listed in the Notice of Violation, the City Manager may order that the suspension be lifted.

2. If the City placards the property subject of a License, and the City Manager determines that the Licensee and Massage Therapy Business has remedied all violations listed in the Notice of Violation, the City Manager shall order that the placards be removed from the property.

59.13 – APPEAL OF ADMINISTRATIVE DECISIONS OR ACTIONS.

1. Any person aggrieved by a decision or act of the City Manager or City under this chapter, including, but not limited to, denial of a License, a Notice of Violation, or corrective action taken by the City, shall have the opportunity for hearing before a hearing officer appointed by the City. Any aggrieved party may appeal any such decision or act by submitting a written request for a hearing to the City Clerk. All such appeals must be hand delivered, electronically delivered, or posted by mail within ten days of the decision or act of the City Manager or City. When a timely appeal has been made, the hearing shall be held pursuant to this section; any request for hearing received untimely shall not entitle the requesting party to a hearing.

2. Upon receipt of a timely request for hearing and the appointment of a hearing officer, the hearing officer shall set a hearing to be held within ten days from said receipt and, further, shall give no less than seven days' notice to the requesting party of the time, date, and location of said hearing. The hearing may be reset by agreement of the parties, as confirmed in writing, but in no event shall the hearing be held any later than thirty days after the date of the action or decision being appealed.

3. The hearing shall be informal in nature, and the parties may be represented by counsel or appear on their own behalf. After reviewing the evidence presented, the hearing officer shall make a written ruling within five days of the hearing affirming or vacating the decision or act of the City Manager or City under this chapter.

59.14 – SERVICE OF NOTICE.

Except where expressly provided otherwise, notices required under this chapter shall be served by one or more of the following methods:

1. Mailing by both regular mail and certified mail, as defined in Iowa Code Section 618.15 (2015), to the last known address of the Licensee and/or Registered Manager;

2. Hand delivery and mailing by regular mail to the Licensee and Registered Manager;
3. Personal service on the Licensee and Registered Manager pursuant to Iowa Rule of Civil Procedure 1.305; or;

4. Any other method of providing notice that results in the notice actually being received by the Licensee and Registered Manager;

5. In the event the Licensee is a business entity, service shall be made upon the Registered Agent on file with the Iowa Secretary of State. If the Licensee is a business entity that has failed to register, or is not required to register a Registered Agent with the Iowa Secretary of State, service upon the Registered Manager shall be deemed sufficient under this chapter.

59.15 – ALTERNATIVE MEANS OF ENFORCEMENT.

1. Without negating, restricting, or otherwise limiting any conditions or sanctions imposed pursuant to this chapter, this chapter may also be enforced by any lawful means, including but not limited to the following:
   a. Prosecution as a simple misdemeanor in accordance with Chapter 1 of the Cedar Rapids Municipal Code and Chapter 364 of the Iowa Code;
   b. The filing of a Municipal Infraction in accordance with Chapter 1 of the Cedar Rapids Municipal Code and Chapter 364 of the Iowa Code.

59.16 – ADMINISTRATIVE RULES.

The City Manager is authorized to establish administrative rules not inconsistent with any ordinance to carry out the provisions of this chapter. A copy of said rules shall be on file at the Office of the City Clerk."

Section 2. It is the intention of the Council that each section, paragraph, sentence, clause, and provision of this Ordinance is separable, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance nor any part thereof other than that affected by such decision.

Section 3. This Ordinance shall be in full force and effect as of January 1, 2019 following its passage and publication as provided by law.

Section 4. The changes as provided in this Ordinance shall be made a part of the replacement pages of the Municipal Code, City of Cedar Rapids, Iowa, and made a part of said Code as provided by law.

Section 5. All ordinances or parts of ordinances in conflict with any provision of this Ordinance are hereby repealed.

Introduced this 23rd day of October, 2018.
Passed this 13th day of November, 2018.

Voting: Council member Todd moved the adoption of the ordinance; seconded by Council member Overland. Adopted, Ayes, Council members Hoeger, Olson (Tyler), Overland, Poe, Todd, Weinacht and Mayor Hart.

[Signature]
Bradley G. Hart, Mayor

Attest:

[Signature]
Amy Stevenson, City Clerk