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Ordinance No. 2290

AN ORDINANCE ESTABLISHING NEW CHAPTER 5.60 OF THE MUNICIPAL CODE OF THE CITY OF DERBY, KANSAS, PERTAINING TO THE LICENSING OF MASSAGE THERAPY BUSINESSES AND MASSAGE THERAPISTS WITHIN THE CITY OF DERBY AND REGULATING THE CONDUCT OF PARTICIPANTS THEREIN.

WHEREAS, the City of Wichita recently enacted a Massage Regulations Ordinance in response to complaints of certain Wichita massage therapy businesses engaging in criminal activities including sexual relations for hire and human trafficking; and

WHEREAS, the Wichita Police Department's enhanced enforcement also indicated that the owners of massage therapy businesses who were engaged in illegal activity pursued locations in jurisdictions where massage therapy businesses were unregulated; and

WHEREAS, the City of Derby, Kansas has determined that the regulation of massage therapy businesses and massage therapists within the City will protect the health, safety and welfare of the residents of the City and will minimize the potential effects of massage therapy businesses and massage therapists who engage in criminal activities and will further minimize the potential relocation of such undesirable business operators from Wichita to Derby in light of Wichita's recent regulation.

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

SECTION 1. Chapter 5.60 of the Derby Municipal Code is hereby established and titled as follows:

Chapter 5.60 MASSAGE THERAPY BUSINESSES

Sections:

5.60.010 Definitions
5.60.020 Exceptions
5.60.030 Massage Business License Required
5.60.040 Application for Massage Business License
5.60.050 Standards for Issuance of Massage Business License
5.60.060 Massage Therapist License Required, Exception
5.60.070 Application for Massage Therapist License
5.60.080 Standards for Issuance of Massage Therapist License
5.60.085 Licensing of existing Massage Practitioners
5.60.090 Fees
5.60.100 Display of License-Massage Therapy Business
5.60.110 Display of License Cards—Massage Therapist

5.60.120 Duration of License, Renewal Thereof
5.60.130 Suspension or Revocation of License, Notice
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5.60.160 Inspection of Premises; Immediate Right of Entry
5.60.170 Operating Requirements—Massage Therapy Business
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5.60.190 Persons under age 18 prohibited services
5.60.200 Transfer of License
5.60.210 Applicability to Existing Businesses and Providers of Massage Therapy
5.60.220 Penalties
5.60.230 Nuisance Declared; Injunctive Relief or Civil Remedies
5.60.240 Severability

SECTION 2. Section 5.60.010 of the Derby Municipal Code is hereby established to read as follows: **"Definitions.**

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purposes of this chapter, have the meaning indicated in this section:

(1) "Accredited institution" means a post-secondary institution that is accredited by one of the Regional Agencies of the Higher Learning Commission or an institution recognized by the Kansas Board of Regents to provide vocational, technical or post-secondary education in the state of Kansas.

(2) "Chief of Police" means the Chief of Police of the City of Derby or a designated representative.

(3) "City" means the City of Derby, Kansas.

(4) "Clean" means the absence of soil, dirt, and debris.

(5) "Client" means any person who receives any service of a massage therapy business.

(6) "Council" means the Derby City Council.

(7) "Crimes involving moral turpitude" includes charges of sale of sexual relations, prostitution, buying sexual relations, patronizing a prostitute, human trafficking, promoting prostitution, aggravated human trafficking, sodomy, soliciting for immoral purposes, public nudity, lewd and lascivious behavior, sexual battery, loitering for the purposes of solicitation, commercial sexual

exploitation of a minor, indecent liberties with a child, incest, adultery, bigamy, promoting obscenity, promoting obscenity to minors, displaying material harmful to minors, any crime set forth in Article 55 of Chapter 21 of the Kansas Statutes Annotated, possession, sale or distribution of any illegal drug or controlled substance or any other offenses similar to those listed herein that are contrary to the laws of any city, state or of the United States.

(8) "Disinfect" means to use an EPA-registered product effective against Methicillin Resistant Staphylococcus aureus (MRSA) and Vancomycin Resistant Enterococcus faecalis or faecium (VRE) according to manufacturer's instructions.

(9) "Employee" means any and all persons employed in any capacity by the operator of a massage therapy business, including independent contractors, who work in, at, or render any services to the patrons of a massage therapy business or who render any service directly related to the operation of a massage therapy business.

(10) "EPA" means the United States Environmental Protection Agency.

(11) "Laundered" means using either regular commercial laundering or a noncommercial laundering process in which the towels, robes, bandages, pads or other articles are washed on a hot water setting with detergent and at least one (1) cup of bleach or an antibacterial agent used in accordance with product label instructions in a clothes washer and dried on a high heat setting in a dryer; or a noncommercial laundering process in which the towels, robes, linens, or other articles are immersed in water with a temperature of at least 140 degrees Fahrenheit for at least 15 minutes during the washing or rinsing operation.

(12) "Massage business license" means the license issued by the City to operate a massage therapy business.

(13) "Massage therapist license" means the license issued by the City to practice massage therapy.

(14) "Massage therapist" means any person who administers massage therapy, except as exempted in Section 5.60.020

(15) "Massage therapist school" means an approved massage therapy education program that meets the criteria established in this Chapter, and any amendments thereto, and is both authorized in the jurisdiction in which it is located and that reflects a curriculum acceptable to an accrediting body recognized by the United States Department of Education. Education received outside of the United States must be substantially equivalent to the criteria of this Chapter and must be recognized by the jurisdiction in which it is located.

(16) "Massage therapy" or "massage" means care and services provided in a system of therapeutic, structured touch, palpation or movement of the skin, muscle, tendons, fascia and the lymphatic system of another person's body in order to enhance or restore the general health and well-being of the recipient. Such a system includes, but is not limited to techniques such as effleurage, commonly called stroking or gliding; petrissage, commonly called kneading; tapotement or percussion; friction, vibration, compression; stretching within the normal anatomical range of movement; hydrotherapy; or such techniques which may be applied with or without the aid of lubricants, salt or herbal preparations, water, hot and cold application or massage devices that mimic or enhance the actions possible by human hands. Massage therapy shall not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry is required, and does not include the laying on of hands performed within the context of religious or spiritual beliefs.

(17) "Massage therapy business" means any business offering or providing massage therapy for consideration except as exempted in Section 5.60.020; and whether at a fixed place of business or at a location designated by the customer or client through outcall massage services. The term "massage therapy business" includes a massage therapist who is the sole owner, operator and employee of a massage therapy business operating as a sole proprietorship.

(18) "Offer" includes any form of communication, by any medium.

(19) "Official transcript" means a document certified by a school on a form approved and prescribed by the United States Department of Education or other regulating authority, indicating the hours and types of coursework, examinations and scores that were completed by the student.

(20) "Operator" means the person to whom a massage therapy business license is issued.

(21) "Outcall massage" means the engaging in or carrying on of massage therapy for compensation in a location other than the business operations address set forth in the massage establishment's massage therapy business license.

(22) "License card" means the license identification card issued by the City to a massage therapist.

(23) "Person" means any individual, corporation, partnership, association, firm, joint venture, company or other state franchised business entity such as a professional association, limited liability company, limited liability partnership or other organization of any kind.

(24) "Sole proprietorship" means and includes any legal form of business organization where the business owner (sometimes referred to as the "sole proprietor") is the

only person employed by that business to provide massage services."

SECTION 3. Section 5.60.020 of the Derby Municipal Code, is hereby established to read as follows: **"Exceptions.**

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

(1) Persons holding an unrevoked license or certificate to practice any of the healing arts under the laws of the state of Kansas; persons licensed under the laws of this state to practice any of the following: podiatry, as a physical therapist, as a professional nurse or as a practical nurse while such persons are engaged in their licensed practice; and all persons working under the supervision and control of such licensed persons while engaged in their licensed practice;

(2) any medical care facility as defined and licensed under the laws of this state applicable to such medical care facility or persons employed thereby, while engaged in their usual duties for such medical care facility;

(3) any adult care home as defined and licensed under the laws of this state applicable to such adult care home or persons employed thereby, while engaged in their usual duties for such adult care home;

(4) any person engaged in barbering or in the practice of cosmetology or apprentice while carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued under the laws of this state applicable to such barbering or cosmetology practice;

(5) employees of schools supported primarily by taxation, of schools exempt from payment of property taxes, and of "proprietary schools," approved by the Kansas Board of Regents while engaged in their usual duties for the school;

(6) any person providing massage therapy to a person related to them by blood or marriage when there is no charge for such massage therapy;

(7) massage therapy students enrolled in a proprietary school approved by the Kansas Board of Regents while under the direct supervision of a licensed massage therapist; or

(8) A business solely utilizing mechanized or electric massage chairs which does not otherwise offer or provide personal massage therapy services by a massage therapist and which does not otherwise employ massage therapists.

(9) A trainer of any duly constituted athletic team while in the normal course of his or her duties."

SECTION 4. Section 5.60.030 of the Derby Municipal Code is hereby established to read as follows: **"Massage Business License required.**

It is unlawful for any person to operate a massage therapy business without a valid massage business license as required by this chapter."

SECTION 5. Section 5.60.040 of the Derby Municipal Code is hereby established to read as follows: **"Application for Massage Business License.**

(a) Any person desiring to obtain a license to operate a massage therapy business shall make written application to the Development Manager.

(b) The application shall be verified and accompanied by the license fee.

(c) All applicants shall provide the following information under oath:

(1) The full true name and any other aliases used by the applicant;

(2) If the applicant is an individual, the name, date of birth, race, gender, address, telephone number and email address of the proposed licensee;

(3) The name, address and telephone number of the business and type of business organization (individual, partnership, corporation or limited liability company). If the business is a partnership, corporation or limited liability company, the same information required of an individual applicant in Subsections (2), (8), (9) and (10) is required of all partners, officers, directors, managers, members or persons owning more than 5% of the common or preferred stock of the business or owning more than 5% interest in the company;

(4) The proposed address and name or names of the premises upon which the massage therapy business for which a license is sought will be located and any name under which the applicant plans to conduct business ("dba" name);

(5) The hours that the massage therapy business service will be open to the public, including such times that the door or doors providing entry to the massage therapy business may be locked as allowed in Subsection 5.60.170(e) and amendments thereto;

(6) The name of the owner of the premises upon which the massage therapy business is to be located;

(7) A Certificate of Good Standing from Kansas, or other state of incorporation or registration, if the applicant is a corporation, partnership or limited liability company;

(8) A statement as to whether the applicant or any partner, officer, director, manager, member or person owning more than 5% of the common or preferred stock of the business or owning more than 5% interest in the company has within five (5) years preceding the date of application been convicted of, or on diversion or deferred judgment for any felony or any crime of moral turpitude as defined in Subsection 5.60.010(7);

(9) A statement as to whether the applicant or any partner, officer, director, manager, member or person owning more than 5% of the common or preferred stock of the business or owning more than 5% interest in the company is currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in Subsection 5.60.010(7);

(10) A statement as to whether the applicant or any partner, officer, director, manager, member or person owning more than 5% of the common or preferred stock of the business or owning more than 5% interest in the company is a registered sex offender;

(11) Information listing the applicant's employment history in the massage therapy business or similar business for the five (5) years immediately preceding the date of the application. The information shall include contact information detailing the past locations where applicant has operated a massage therapy business, the past employment locations of the applicant and/or any other massage therapy practitioners with whom the applicant was employed, affiliated or shared office space during said period.

(12) Information as to whether such individual or business has ever been refused any similar license, or has had any similar license issued to such individual or business in Derby or elsewhere revoked or suspended, and the reason thereof; and

(13) A statement by the applicant that he or she is familiar with the provisions of this chapter and is complying and will comply with them."

SECTION 6. Section 5.60.050 of the Derby Municipal Code is hereby established to read as follows: **"Standards for issuance of Massage Business License.**

(a) To receive a license to operate a massage therapy business, all applicants must meet the following standards:

(1) The required fees must be paid;

(2) The application must be complete and provide all information required by Section 5.60.040;

(3) The applicant must not have knowingly made a false or misleading statement of a material fact in the application;

(4) The applicant must be at least eighteen years of age;

(5) The applicant must not, within five years immediately preceding the date of the filing of the application, have been convicted in any jurisdiction of a felony or crime involving moral turpitude as defined in this chapter. For the purposes of this section the term "conviction" shall include being placed on diversion, entering into a deferred judgment program, or being adjudged guilty upon entering a plea of no contest;

(6) The applicant must not be currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in Subsection 5.60.010(7);

(7) The applicant must not be a registered sex offender with any federal, state or local government;

(8) The applicant must not have had a similar type of license in any jurisdiction previously suspended or revoked for good cause within five years immediately preceding the date of the filing of the application; and

(9) The operation of the business as proposed, if permitted, must comply with all applicable building, fire, and zoning regulations of the City of Derby. Any massage business operating out of a residence shall be required to obtain a Home Occupation License as required by Section 602 of Article 6 of the Derby Zoning Regulations.

(b) If the applicant is a partnership, corporation, limited liability company or other type of organization where two or more persons have a financial interest the following standards must be met:

(1) All persons having financial interest in the partnership, corporation, limited liability company or other type of organization shall be at least eighteen years of age. Financial interest in a corporation, partnership, limited liability company, or other type of organization includes any officer or director of the corporation and any stockholder holding more than five percent (5%) of the stock of a corporation or any individual manager, entity, or member owning more than 5% interest in the company, entity or organization;

(2) No person having a financial interest in the partnership, corporation, limited liability company or any other type of organization shall, in any jurisdiction, have been convicted of, pled no contest to, or participated in a diversion or deferred judgment program, after having been charged with a felony or any crime involving moral turpitude as defined in Section 5.60.010(7) within the immediate five years preceding the date of the application;

(3) No person having a financial interest in the partnership, corporation, limited liability company or any other type of organization shall be currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in Subsection 5.60.010(7); and

(4) No person having a financial interest in the partnership, corporation, limited liability company or any other type of organization shall be a registered sex offender with any federal, state or local government."

(5) No person having a financial interest in the partnership, corporation. limited liability company or any other type or organization shall have a similar type of license in any jurisdiction previously suspended or revoked within five years immediately preceding the date of the filing of the application."

SECTION 7. Section 5.60.060 of the Derby Municipal Code is hereby established to read as follows: **"Massage Therapist License required, exception.**

It is unlawful for any individual person to practice massage therapy without a valid massage therapist license as required by this chapter. Provided, however, licenses are not required for students enrolled in a massage therapy program at an accredited institution during the time such student is completing a clinical requirement for graduation and is practicing massage therapy while under the direct supervision of a massage therapist who holds a valid license under this chapter. Direct supervision requires the presence of the massage therapist holding a license under this chapter to be on the same premises as the student providing massage therapy services."

SECTION 8. Section 5.60.070 of the Derby Municipal Code is hereby established to read as follows: **"Application for Massage Therapist License.**

(a) Any person desiring to secure a license to practice massage therapy shall make written application to the Development Manager on a form provided for that purpose. The application shall be verified by the applicant, accompanied by the required licensee fee and shall provide the following information under oath:

(1) The applicant's full name, address, date of birth, any other used aliases, gender, and current phone number and current email address, if available;

(2) The applicant's city, state and country of residence for the five years immediately preceding the date of the application;

(3) A statement that the applicant is a citizen or lawful resident of the United States and is not less than eighteen years of age;

(4) A statement that the applicant has not been convicted of a felony or any crime involving moral turpitude as defined in Section 5.60.010(7) within five years immediately preceding the date of the application. For the purposes of this section the term "conviction" shall include being placed on diversion, entering into a deferred judgment program, or being adjudged guilty upon entering a plea of no contest;

(5) A statement that the applicant is not currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in Subsection 5.60.010(7);

(6) A statement that the applicant is not a registered sex offender with any federal, state or local government;

(7) Proof of any education, training and experience the applicant may have had qualifying the applicant to administer the service of a massage therapist as required by Section 5.60.080(8) or, if applicable, Section 5.60.085(2) of this Code;

(8) Information as to any prior license allowing the practice of massage therapy issued to the applicant within the past five years. Specifically, the applicant shall provide information as to the type of license, the issuing agency or jurisdiction, the address and phone number of the issuing agency or jurisdiction, the time period covered by the prior license and whether any such license issued to the applicant in any jurisdiction was ever revoked or suspended and the reason or reasons for such revocation or suspension; and

(9) A list of locations and massage therapy businesses within the city where the applicant intends to work and offer services as a massage therapist.

(10) Information detailing the applicant's employment history for the five (5) years immediately preceding the date of the application including any history of the applicant's prior employment in massage therapy or a similar business. The information shall include contact information detailing the past employment locations of the applicant and for past massage therapy employment the information shall include a list of

any other massage therapy practitioners with whom the applicant was employed, affiliated or shared office space during said period.

(11) Information as to whether applicant has ever been refused or denied any license allowing the practice of massage therapy within the past five years and the specific date of such refusal or denial, the jurisdiction where such refusal or denial occurred, the address and phone number of the agency denying or refusing such license and reason for such refusal or denial."

SECTION 9. Section 5.60.080 of the Derby Municipal Code is hereby established to read as follows: **"Standards for issuance of Massage Therapy License.**

To receive a license to provide services as a massage therapist an applicant must meet the following standards:

(1) The required fees must be paid.

(2) The application must be complete and provide all information required by Section 5.60.070;

(3) The applicant must not have knowingly made a false or misleading statement of a material fact in the application;

(4) The applicant must be at least eighteen years of age and a lawful citizen or resident of the United States.

(5) The applicant must not have been convicted or released from imprisonment after conviction of a felony or any crime involving moral turpitude as defined in Section 5.60.010(7) within five years immediately preceding the date of application. For the purposes of this section the term "conviction" shall include being placed on diversion, entering into a deferred judgment program, or being adjudged guilty upon entering a plea of no contest.

(6) The applicant must not be currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in Subsection 5.60.010(7);

(7) The applicant must not be a registered sex offender with any federal, state or local government.

(8) The applicant must provide one of the following:

(a) Proof the applicant has sat for and passed the Massage and Bodywork Licensure exam (MBLEx); or

(b) Proof the applicant has sat for and passed the National Certificate of Therapeutic Massage and Bodywork exam (NCTMB) prior to February

1, 2015; or

(c) An official transcript showing the applicant has successfully completed a minimum of five hundred (500) instructor taught classroom hours within a recognized massage therapist school; or

(d) Proof of one hundred fifty (150) hours of education from an accredited institution, at least twelve (12) hours of continuing education units in the last five (5) years, and membership in a nationally recognized massage therapy association.

(9) The applicant must not have had a similar type of license suspended or revoked in any jurisdiction within five years immediately preceding the date of the filing of the application."

SECTION 10. Section 5.60.085 of the Derby Municipal Code is hereby established to read as follows: **"Licensing of Existing Massage Practitioners.**

For a period of one (1) year after the effective date of this Chapter, an applicant who upon the effective date of this ordinance is operating in Derby a massage therapy business or is engaged in Derby in providing massage therapy services may obtain a renewable license to provide services as a massage therapist by meeting the following standards:

(1) The applicant must meet the requirements contained in Subsection (1), (2), (3), (4), (5), (6), (7) and (9) of Section 5.60.080, and amendments thereto; and

(2) The applicant meets one of the following requirements:

(a) The applicant has completed a minimum of five hundred (500) hours of instruction relating to massage therapy at a massage school or comparable legal authority in another state verified by affidavit; or

(b) The applicant has completed at least three hundred (300) hours of training in massage therapy during the past three (3) years; or

(c) The applicant has practiced for at least ten (10) hours per week for five (5) years verified by affidavit and at least one additional form of documentation including, but not limited to tax returns, gross tax receipts, business advertising literature or monthly client receipts; or

(d) The applicant has successfully passed a nationally recognized certification examination provided by the National Certification Board for Therapeutic Massage and Bodywork."

SECTION 11. Section 5.60.090 of the Derby Municipal Code is hereby established to read as follows: **"Fees.**

(a) For every massage therapy business there shall be a license fee required in the amount as established by resolution of the governing body of the City. This fee shall accompany all initial and renewal license applications and no license shall be issued until the required fee is paid in full.

(b) For every massage therapist license there shall be a license fee required in the amount as established by resolution of the governing body of the City. This fee shall accompany all initial and renewal applications for a license and no license shall be issued until the fee is paid in full.

(c) In the event of denial of application on basis of background check, the applicant may request a fifty percent (50%) refund of their application fee on the condition that a written request for partial refund is made within twenty (20) business days.

(d) An individual required by the provisions of this chapter to obtain both a massage business license and a massage therapist license shall be required to pay the higher fee of the two required licenses, but shall not be required to pay both license fees.

(e) Individuals licensed pursuant to this chapter shall be exempt from the business registration requirements, including the payment of the annual business registration fee, found in Chapter 5.04 of the Derby Municipal Code.

(f) There shall be a fee of five dollars ($5.00) for replacement of the identification card required in Section 5.60.110.

(g) Other than the partial refund authorized for denial of an application in subsection (b) of this section all fees set forth in this section are non-refundable and no fees shall be prorated."

SECTION 12. Section 5.60.100 of the Derby Municipal Code is hereby established to read as follows: **"Display of License– Massage Therapy business.**

The license issued pursuant to the requirements of this chapter shall be displayed in a conspicuous public place within the premises licensed as a massage therapy business. Failure to display such license shall be deemed a violation of this chapter and punishable as set forth in Section 5.60.220."

SECTION 13. Section 5.60.110 of the Derby Municipal Code is hereby established to read as follows: **"Display of License Identification Cards and Window Signs– Massage Therapist.**

(a) All massage therapists holding a license under the provisions of this chapter shall, at all times when working in a massage therapy business or providing any service regulated by this chapter, have in their possession a valid license identification card issued by the City and bearing the massage therapist's license number and photograph. All persons granted massage therapist licenses under this chapter shall at

all times keep their license identification cards available for inspection upon request by any law enforcement officer, or designated representative thereof.

(b) A window sign declaring that the massage therapist is licensed by the City of Derby will be provided for all massage therapy licensees. The window sign must be visible onsite during all times that the licensee is performing massage therapy.

(c) It is unlawful for any massage therapist license holder to engage in any activity within the purview of this chapter without having such license identification card in his or her possession as well as without having the window sign displayed clearly in sight and failure to do so shall be punishable as set forth in Section 5.60.220."

SECTION 14. Section 5.60.120 of the Derby Municipal Code is hereby established to read as follows: **"Duration of Massage License, Renewal Thereof.**

(a) A license to operate a massage therapy business and a license to perform services as a massage therapist issued pursuant to the provisions of this chapter shall be valid for a term of two years unless sooner suspended or revoked as provided herein.

(b) Expiring licenses must be renewed in order to continue operation of a massage therapy business and/or prior to performing services as a massage therapist in the following year. Application for renewal of an existing license must be made not later than thirty days prior to the date of expiration of the license."

SECTION 15. Section 5.60.130 of the Derby Municipal Code is hereby established to read as follows: **"Suspension or Revocation of Massage License, Notice.**

(a) A license issued pursuant to this chapter may be suspended for up to thirty (30) days by the Chief of Police. Any suspension shall be upon five (5) days' written notice to the licensee, or if the licensee is a corporation or other business entity, any of its officers, directors, partners, associates, managers, members, persons owning more than 5% of a corporation's stock or more than 5% interest in said company that the licensee and/or any employee thereof has:

(1) failed to provide complete information as requested on any application or if any data is not updated as required by this chapter; or

(2) failed to pay the license fee; or

(3) violated any provision of this chapter or any other ordinance, rule or regulation by the City Council of the City of Derby which is not specified in subsection (b) below as grounds for revocation of a license; or

(4) has aided or abetted the commission of, or knowingly allowed or encouraged any act which is a violation of this chapter which is not

specified in subsection (b) below as grounds for revocation of a license; or

(5) has violated or failed to comply with the sanitary requirements set forth in Section 5.60.150 of this chapter, or are in violation of the fire, zoning or building codes of the City of Derby, or the State of Kansas.

(b) A license issued pursuant to this chapter may be revoked by the the Chief of Police. Any revocation shall be upon five (5) days' written notice of the licensee, or if the licensee is a corporation or other business entity, any of its officers, directors, partners, associates, managers, members, persons owning more than five percent of a corporation's stock or interest in said company or any employee thereof:

(1) has knowingly made any false statement or given any false information in connection with an application for a license or a renewal of a license; or

(2) has been convicted of, or is under indictment, charge or information for any felony or any crime of moral turpitude as defined in Subsection 5.60.010(7) or any act which would be grounds for denial of an application for a license, or otherwise becomes ineligible for a license; or

(3) has failed to allow the entry upon and inspection of the premises as required by Section 5.60.160 of this chapter; or

(4) The licensee has committed recurring violations or recurring instances of non-compliance with the requirements of this chapter. "Recurring violations or recurring instances of non-compliance shall mean that the licensee or if the licensee is a corporation or other business entity, any of its officers, directors, partners, associates, managers, members, persons owning more than 5% of a corporation's stock or more than 5% interest in said company or its employees, individually or cumulatively, have committed four or more offenses or been documented as committing four or more instances of non-compliance as set forth in subsection (a) above within a two (2) year period. For the purposes of this provision, it is irrelevant whether an offense or instance of non-compliance occurred before or after suspension for a previous offense or whether the offense or offenses occurred on or upon the same licensed premises.

(c) For the purposes of this section, 'conviction' shall include being placed on diversion or deferred judgment or being adjudged guilty upon entering a plea of no contest, and the filing of charges or a conviction in a court of law is not required to establish that a licensee has violated any provision of this chapter or any other ordinance, rule or regulation by the City Council of

the City of Derby. A certified copy of conviction from any local or state court is prima facie evidence of a violation.

(d) For the purposes of subsections (a) and (b) of this section, the Chief of Police or the City shall provide written notice of the intent to revoke, suspend or deny a massage therapy business license or a massage therapist license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the licensee on file with the City. The notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the suspension or revocation of the license and shall specify the rights of the licensee to appeal any such revocation or suspension."

SECTION 16. Section 5.60.140 of the Derby Municipal Code is hereby established to read as follows: **"Appeal Procedure.**

(a) Any applicant or licensee aggrieved by the denial, suspension or revocation of a massage therapy business license or a massage therapist license may file with the City Clerk a written notice of appeal to the City Council within twenty (20) business days of the decision by the Chief of Police or designee. The Notice of Appeal shall specify:

(1) the name and address of the applicant

(2) the date of application;

(3) the date of the denial, suspension or revocation of the license or application; and

(4) the factual basis for the appeal.

(b) Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council no later than thirty (30) days from the date of the filing of the Notice of Appeal. Any appeal shall stay the suspension or revocation of the license until the matter is heard by the City Council.

(c) The City Council may approve the denial, suspension or revocation, overrule the denial, suspension or revocation or modify the decision of the Chief of Police.

(d) In any hearing before the City Council pursuant to this section, a certified copy of a conviction from any local, state or federal court for any violation is prima facie evidence of such violation.

(e) The City Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, suspension or revocation of the license or any modification imposed thereupon by the City Council.

SECTION 17. Section 5.60.150 of the Derby Municipal Code is hereby established to read as follows: **"Sanitary requirements.**

All massage therapy business facilities and equipment must comply strictly with the following sanitary conditions:

(a) All surfaces of floors, walls, and ceilings and all equipment used in massage therapy must be capable of being cleaned easily.

(b) All surfaces subject to dermal contact used in the treatment of clients must be completely cleaned and disinfected after every use or covered with a fresh, sanitary, disposable liner or cover or with a cloth sheet or cover that has not been previously used for a different client since laundering.

(c) Towels, robes, bandages, pads, paper, or other articles that come into contact with any part of the client's body must be laundered, cleaned and disinfected, or disposed of after each use and before being used by a different client.

(d) Covers, liners, or sheets designated in subsections (b) and(c) of this section must be stored prior to use in a sanitary environment.

(e) Lavatory and toilet facilities must be provided, along with adequate and convenient hand-washing facilities, including hot and cold running water, soap and towels, which are accessible to employees.

(f) Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use."

SECTION 18. Section 5.60.160 of the Derby Municipal Code is hereby established to read as follows: **"Inspection of premises; immediate right of entry.**

The premises of a massage therapy business or the location or premises where any licensed massage therapist is offering or performing massage therapy services shall be open to inspection by any Fire, Zoning, Licensing and Building code enforcement personnel of the City of Derby, as well as Derby Police Officers or personnel from other law enforcement agencies. Such inspections shall be for the purposes of determining compliance with the provisions of this chapter. Failure by any person to allow any enforcement personnel or law enforcement official immediate access to the premises or to hinder such officer or personnel in any manner shall be grounds for revocation or suspension of any massage therapy business license and/or massage therapist license."

SECTION 19. Section 5.60.170 of the Code of the City of Derby, Kansas, is hereby created to read as follows: **"Operating requirements - massage therapy business.**

(a) Written receipts to clients available. A massage therapy business shall make available upon request by a patron a written receipt of payment for massage therapy services. The receipt shall clearly state the type of services performed

and the total amount of money such services cost the client.

(b) Employee registers required. The owner, operator, supervising employee or anyone in control of a massage therapy business shall maintain a daily register/time sheet for all employees of the massage therapy business on a form approved by the Chief of Police and shall contain the identifying information for all employees, including the name, address, birth date, gender and duties of each employee, the hours of employment on a daily basis of each employee, and such other information as may be required by the Chief of Police.

The daily register required in this subsection shall be kept on file upon the same premises as the licensed business for a period of one year, and shall be kept for all persons deemed "employees" as that term is defined in Section 5.60.010(9) and amendments thereto.

(c) The owner, operator, supervising employee or anyone in control of a massage therapy business shall maintain a copy of the massage therapist license card for all employees who are required to be licensed by this chapter.

(d) Hours of operation. A licensed massage therapy business shall be closed and operations shall cease between the hours of 12:00 midnight and 6:00 a.m. each day.

(e) The door or doors providing entry to a massage therapy business by the public shall remain unlocked during business hours when the establishment is open for business or when clients are present. Provided, if a massage therapy business is operating as a sole proprietorship and does not have staff available to assure security and safety for clients and massage staff behind closed doors, the door or doors providing entry area to the massage therapy business may be locked during business hours. However, the door must be openable from the interior side without the use of a key, card, or special knowledge or effort. A simple motion of the door handle must open the door and allow occupants to exit. The business owner or employee on location who fails to unlock the premises for immediate inspection after a uniformed law enforcement officer has knocked, announced, called or otherwise communicated with the business and clearly identifies themselves as law enforcement requesting immediate entry for inspection will be in violation of the inspection and immediate right of entry provision of this chapter.

(f) Conduct of premises. All licensees licensed under the provisions of this chapter shall at all times be responsible for the conduct of all employees, independent contractor massage therapists and the employees of an independent contractor massage therapist while on the licensed premises and for any act or omission constituting a violation of the provisions of this chapter. Any violation of city, state or federal laws committed on the licensed premises by such licensee, employee, independent contractor massage therapist or the employee of an independent contractor massage therapist affecting the eligibility or suitability of

such person to hold a license may be grounds for suspension or revocation of the same.

(g) Supervision of licensed premises. A licensee shall have the premises supervised at all times when open for business. The licensee, the licensee's resident agent if a corporation or other business entity or a person employed and licensed as a massage therapist shall be personally present upon the premises and supervising the business at all such times and shall not violate or permit others to violate any applicable provision of this chapter.

(h) The violation of any such provision of this Chapter by any agent or employee of the licensee shall constitute a violation by the licensee.

SECTION 20. Section 5.60.180 of the Derby Municipal Code is hereby established to read as follows: **"Prohibited acts.**

It shall be unlawful and punishable as set forth in Section 5.60.220 for any operator, agent or employee of an operator, massage therapist, independent contractor massage therapist, or employee of an independent contractor massage therapist to commit any of the following acts:

(a) permit to be performed, offer to perform or perform with any client any sexual act prohibited by state statute or city ordinance; including sale of sexual relations; or

(b) permit to be performed, offer to perform or perform with any client an act of sexual intercourse, oral-genital contact, anal copulation, the touching of the sexual organs, pubic region other than releasing scar tissue from childbirth, female breast of a person, or manual or other contact stimulation of the genitalia for the purpose of arousing or gratifying the sexual desires of the operator, agent, employee, massage therapist or client; or

(c) expose while administering massage therapy for compensation the human male or female genitals, anus, anal cleft or cleavage; the female breast below a horizontal line across the top of the areola at its highest point, which includes the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed in whole or in part; or covered male genitals in a discernibly turgid state; or

(d) while in the presence of any person, or while administering or receiving massage therapy fail to cover with a fully opaque covering the human male or female genitals, anus, anal cleft or cleavage; the female breast below a horizontal line across the top of the areola at its highest point, which includes the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed in whole or in part; or

(e) for any person who owns, rents, leases, operates or manages a massage business to cause, allow, or permit in or about said massage business, any person to engage in the acts prohibited in this section."

SECTION 21. Section 5.60.190 of the Derby Municipal Code is hereby established to read as follows: **"Persons under age 18 prohibited services.**

No licensee shall perform or permit any massage therapy to be provided to a person under the age of 18 years, provided a person under the age of 18 years may utilize or receive massage therapy from a massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing."

SECTION 22. Section 5.60.200 of the Derby Municipal Code is hereby established to read as follows: **"Transfer of license.**

No massage therapy business license or massage therapist license is transferable or assignable and such authority as a license confers shall be conferred only on the licensee and/or the location named therein. Additionally, if a massage therapy business or the business entity that holds the license of such a business changes either the name of the business entity or the name under which the entity is doing business ("dba" name), the existing license shall not transfer and a new license shall be required to continue to conduct a massage therapy business."

SECTION 23. Section 5.60.210 of the Derby Municipal Code is hereby established to read as follows: **"Applicability to existing businesses and providers of massage therapy.**

(a) The provisions of this chapter shall be applicable to all existing massage therapy establishments or businesses currently participating in the activities described and regulated by this chapter, regardless of when established. All existing massage therapy businesses at the time of the passage of the ordinance codified in this chapter must submit an application for a license within 120 days of the effective date thereof.

(b) The provisions of this chapter shall also apply to all persons who are currently engaged in the provision of massage therapy or are participating in the provision of activities described and regulated by this chapter. Such persons must submit an application for a massage therapist license within 120 days of the effective date of the ordinance codified in this chapter."

SECTION 24. Section 5.60.220 of the Derby Municipal Code is hereby established to read as follows: **"Penalties.**

Any person who violates any of the provisions of this chapter within the corporate limits of the City of Derby shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished by a fine of not more than two thousand five hundred dollars ($2,500) or by imprisonment for not more than one (1) year or by both such fine and imprisonment, however, upon a conviction of an offense related to the conduct of a massage business, the court shall impose a mandatory minimum fine of no less than two hundred fifty dollars ($250). Upon a conviction of an offense relating to the conduct of an

individual massage therapist, the court shall impose a mandatory minimum fine of no less than one hundred dollars ($100)."

SECTION 25. Section 5.60.230 of the Derby Municipal Code is hereby established to read as follows: **"Nuisance Declared; Injunctive Relief or Civil Remedies..**

Any violation of the provisions of this chapter shall be and the same is declared to be an un lawful and public nuisance. The city may, in addition to or in lieu of any other remedies set forth herein commence an action to enjoin, remove or abate such nuisance in the manner provided by law and may take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance and restrain or enjoin any person from establishing, operating or maintaining a massage therapy business or offering massage therapy services contrary to the provisions of this chapter.

SECTION 26. Section 5.60.240 of the Derby Municipal Code is hereby established to read as follows: **"Severability.**

Should a court of competent jurisdiction declare any section, clause, provision, sentence or part of this chapter to be unconstitutional or invalid, such decision shall affect only such section, clause, provision, sentence or part so declared unconstitutional or invalid and shall not affect any other section, clause, provision, sentence or part of this chapter."

SECTION 27 This ordinance shall be in full force and effect from and after its adoption and publication of said ordinance or a summary thereof in the official city newspaper.

PASSED by the City Council on the 13th day of September, 2016 and SIGNED by the Mayor.

Randy White

Randy White, Mayor

ATTEST:

Karen Friend

Karen Friend, City Clerk

Approved as to form:

Jacqueline R. Butler

Jacqueline R. Butler, City Attorney