



CITY OF LEAVENWORTH
100 N. 5th Street
Leavenworth, Kansas 66048
www.lvks.org

CITY COMMISSION STUDY SESSION
COMMISSION CHAMBERS
WEDNESDAY, NOVEMBER 14, 2018 6:00 P.M.

Welcome - Please turn off or silence all cell phones during the Study Session.

Meetings are televised everyday on Channel 2 at 7 p.m. and midnight


Study Session:

1. Review & Discuss Massage Establishments & Massage Therapists Ordinance (pg. 2)

**POLICY REPORT
STUDY SESSION
REVIEW AND DISCUSS CHAPTER 26 BUSINESSES
CODE OF ORDINANCES ARTICLE III-MASSAGE ESTABLISHMENTS &
MASSAGE THERAPISTS**

NOVEMBER 14, 2018

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City Clerk

Reviewed by:


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City Manager

BACKGROUND/ISSUE

At the October 2, 2018 Study Session staff presented for review the need for amendments to Chapter 26 Article III of the Code of Ordinances for the City of Leavenworth. At the October 23, 2018 Regular Meeting the City Commission began discussions regarding amendments to the ordinance to assist staff in preparing an ordinance for first consideration. There was a motion and unanimous vote by the Commission to table the item for a study session.

Discussion Item 1

- ✓ Consensus by the Governing Body on October 23rd to issue Identification cards

Discussion Item 2

- Consensus by the Governing Body on October 23rd to allow Home Occupation Business of a Massage Establishment by Special Use Permit
- Should a person be allowed to have a home based business without providing actual massage on-site in their home? (Traveling massages only)
 - There is no standardization among regulating cities.
 - Some cities only allow therapists to practice from a commercial business.
 - Others allow a therapist to have a “home-office business”. For consistency, these “home-office business” pay the same annual fee as a massage establishment however, there are no inspections required.
 - No massage takes place in the “home-office business”; no special use permit is required. All massage takes place after scheduling an appointment at the client’s home or office.

Action: Consensus

- Determination by the Governing Body as to what is the best option for our City

Discussion Item 3

- Allowing Massage Therapy in guest rooms of hotels and bed and breakfast establishments?
 - There is no standardization among regulating cities. Some allow some do not.
 - Some therapist feel this is safer than in-home visits

Action: Consensus

- Determination by the Governing Body as to what is the best option for our City

Discussion Item 4

- Currently the Governing Body approves new and renewals of massage establishment licenses. No other license comes before the Governing Body for approval other than Cereal Malt Beverage, which is required by State Statute.
 - Staff would recommend issuance of the license by the City Clerk after all requirements of the ordinance are met.

Action: Consensus

- Allow City Clerk to issue the license without coming before the Governing Body

Discussion Item 5

- Provision to exempt Sole Practitioners who own and operate alone to pay the annual massage therapy establishment fee only (no cost for massage therapist license)
 - This is not standard however one city allowed this for the sole practitioner
 - Simply an option for the Governing Body to consider.

Action: Consensus

- Determination by the Governing Body as to what is the best option for our City

Discussion Item 6

- Should there be a requirement for managers of the establishment to be certified in CPR and First Aid?
 - Standardization among regulated cities is that they require managers of the establishment to be certified in CPR and First Aid.

Action: Consensus

- Determination by the Governing Body as to what is the best option for our City

Discussion Item 7

- Background checks
 - Cities are limited by state statute on what the police department can check
 - Some items are public record and can be checked by the police department
 - If background checks are preformed, they should be done by a third-party: options include:

- Applicant goes to KBI website, pays fee and has a background check done and provides results to City Clerk
 - KBI check is restricted to Kansas only
- If City contracts with a 3rd Party to perform background checks, City pays the fee that is recouped by the application fee

Action: Consensus

- Determination by the Governing Body, background checks performed by KBI or other 3rd party vendor hired by the City

Discussion Item 8

- Hours of operation business
 - Current City ordinance states that the “business shall be closed and operations shall cease between the hours of 12:00 am and 6:00 am each day. Keep in mind the current ordinance includes “adult” business such as bathhouses, body painting studios and modeling studios.
 - The standard practice among regulating cities is that no massage business is allowed to operate between 10:00 pm and 6:00 am, in establishment or off premises.

Action: Consensus

- Determination by the Governing Body as to what is the best option for our City
- Alcoholic beverages – in homes
 - This section is highlighted only to allow language that allows in home massage. Staff will work with the city attorney to substitute language for in home massage.
 - No action or decision needed by the Governing Body
- Sec 26-92(k)
 - This section is highlighted only to allow language that allows in home massage. Staff will work with the city attorney to substitute language for in home massage.
 - No action or decision needed by the Governing Body

Discussion Item 9

- Educational requirements of Therapists in 26-131 (Discussion item #11)

Discussion Item 10

- Appeal to Governing Body or City Manager
 - Within our City Codes some appeals come to the Commission others are heard by the City Manager

Action: Consensus

- Determination by the Governing Body if the appeal should be to the City Manager or to the Governing Body

Discussion Item 11

- Educational requirements of Therapists
 - In a review of cities that regulate massage therapists every city requires 500 hours in theory, method or practice of massage from one or more accredited schools, certification in first aid and CPR, and requires annual continuing education. The only exception is the City of Lansing. Their ordinance is written as ours currently is with only 70 hours of instruction, no first aid, CPR or continuing education required.
 - There are currently 25 massage therapists licensed by the City. Of those 25, only 8 that do not have 500 hours of schooling.
 - Language to grandfather existing therapists has been provided and can be modified in any way the Governing Body would like to exclude the existing therapists from any new/additional educational requirements.

Action: Consensus

- Determination by the Governing Body as to what is the best option for our City

Discussion Item 12

- Identification Cards (Discussion item 1)
 - It is standard for cities that regulate massage therapy to issue one license but to issue additional identification cards for each location type. For example, a nominal fee to issue an ID card to perform massage in a client's home and/or in a client's office.

Action: Consensus

- Determination by the Governing Body as to what is the best option for our City

Discussion Item 13

- Background checks (Discussion item 7)
 - Item 7 -- background checks for establishment owners/managers. This would be the same except this is for the individual. The requirement should be the same for both.

Discussion Item 14

- Appeal Process (Discussion item 10)
 - Item 10 – Appeal for establishment owners/managers. This would be the same except this is for the individual. The requirement should be the same for both.

Fees

The City of Leavenworth currently charges \$350.00 for the initial Massage Establishment License. Renewals are \$175.00. The first year fee is higher to cover the costs of background checks and additional staff time to inspect and process the application. Staff researched the fees charged by surrounding municipalities for massage establishments and found the following:

City	Establishment New Application	Establishment Annual Renewal
Lenexa	\$300.00	\$150.00
Overland Park	\$300.00	\$300.00
Olathe	\$300.00	\$150.00
Shawnee	\$300.00	\$100.00
Bonner Springs	\$200.00	\$150.00
Lansing	\$300.00	\$150.00
Leavenworth	\$350.00	\$175.00
Lawrence	issued under a different business License	
Ottawa & Basehor	They do not regulated	

The City of Leavenworth currently charges \$50.00 per year for a massage therapist license (new and renewal) and requires a license for each business an individual therapist works for.

Options:

- \$50.00 for new license and \$30.00 for renewals
 - One license would cover all locations with a possible nominal fee required to “add-on” another business establishment or for off-business premises therapy
- Keep fees for therapist unchanged

ATTACHED:

- Draft for discussion
- Chapter 26; Article III
- Appendix F-Schedule of Fees for Chapter 26

CHAPTER 26 BUSINESSES

ARTICLE III – MASSAGE THERAPY

DIVISION 1 – GENERALLY

Sec. 26-66 License Required/Fees.

Except as otherwise provided in the Article, no person, firm, partnership, association, corporation, trust, or other type of entity or organization, or individual shall operate a massage establishment, or perform massage therapy without having first obtained the required licenses/permits from the City Clerk. The fee for such licenses/permits shall be prescribed in Appendix F and are not prorated, refundable or transferable. Any application made, fees paid, and licenses obtained under the provision of this Article shall be in addition to and not in lieu of any other fees, permits or licenses required to be paid or obtained under any other ordinance of the City. Such license shall be valid from January 1 to December 31 of each calendar year.

Sec. 26-67 Reference to Chief of Police, City Clerk, City Health Officer.

Any reference in this Article to the Chief of Police, City Clerk or City Health Officer, shall include those persons, designees and any individuals designated by the City Manager.

DISCUSSION ITEM 1 (completed and consensus to issue id cards)

Sec. 26-68 Identification Cards.

All massage therapy establishment owners, managers and massage therapists issued a license pursuant to the provisions of this Article shall, at all times when working in an establishment or providing any service regulated by the Article, have in their possession a valid identification card issued by the City to include the massage therapist's license number, physical description and photograph. Such identification cards shall be laminated to prevent alteration. Provided, that all persons granted licenses under this Article shall at all times keep their licenses available for inspection upon request of any person who by law may inspect same. Provided further that all licensees shall, when conducting massage therapy off their business premises, wear on their clothing in a conspicuous location their identification card.

Sec. 26-69 Restriction of Business to Premises.

- (a) All massage therapy provided for under this Article shall be conducted on the premises of a licensed massage therapy establishment, provided massage therapy may be conducted in a private residence under the following conditions:

- (1) If done at the direction of a licensed healing arts practitioner;
- (2) If done at the written request of a person that shall provide the name and address of the requesting person and the date and time of the service. When private residence massage therapy is offered, whether by telephone, in person or in writing, the person offering such service must state clearly that they are a licensed massage therapist or that the service will be performed by a licensed massage therapist and that prior to any service being provided the person requesting the service will be required to sign a form requesting the service. All such written requests shall be kept by the licensed massage therapy establishment for a period of one (1) year and shall be produced for inspection when requested by the Chief of Police, City Clerk or City Health Inspector. Private residence massage therapy shall not be conducted between the hours of 12:00 a.m. and 6:00 a.m.

DISCUSSION ITEM 2

Should a person be allowed to have a home based business without providing actual massage on-site in their home? (Traveling massages only)

- (b) Licensed massage therapy establishments shall be operated from a commercial business premise or shall be allowed as a home occupation by Special Use Permit as allowed in the Development Regulations of the City upon review and recommendation of the Planning Commission and approved by the Governing Body.
- (c) Sole practitioners (therapists who work alone), are required to have both a massage therapist license and massage therapy establishment license and may work from a commercial business premise or private home, residence or non-commercial business establishment.

DISCUSSION ITEM 3

- (d) *Massage therapy is permitted in the guest rooms of hotels, and bed and breakfast establishments upon written approval of the hotel and bed and breakfast owner(s) and/or manager(s).*

OR

Not allowed

OR

Allowed but limited to the type of massage

Sec. 26-70 Definitions

- (a) *Accredited School*: Any school or institute of learning which is accredited by the State Board of Education or equivalent and approved by any state massage specific license organization. For schools located in states that do not accredit or approve massage therapy programs, the City will consult national massage organizations such as the National Certification Board of Therapeutic Massage and Bodywork and the American Massage Therapy Association to determine if the school should be deemed accredited for purposes of this Article.
- (b) *Business Premises*: Those premises where a private or public commercial enterprise is conducted, but specifically not to include business conducted in a private residence, premises used for joint residential and business purposes, hotels and motels.
- (c) *Employee*: Refers to any person, other than massage therapists, who renders any service to a licensee under this Article, who receives compensation from the licensee or patron.
- (d) *Establishment Applicant*: Refers to each individual owner, if applying as an individual or a group or individuals; each stockholder who holds more than ten (10) percent of the stock of the corporation and each officer and director, if the application is a corporation; each partner, to include limited partners, if the applicant is a partnership.
- (e) *Establishment Representative*: An employee, manager, independent contractor, unpaid volunteer or anyone who works at or on behalf of a massage establishment.
- (f) *Healing Arts Practitioner*: Defined by the provisions of K.S.A. 65-2801, et seq. and refers to a license issued to practice medicine and surgery, osteopathic medicine and surgery or chiropractic.
- (g) *In-clients' Office Massage*: Massage that is conducted on the business premises of a therapist's massage client and is limited to massage therapy applied only above the massage client's waist. The patron must be fully clothed.
- (h) *In-clients' Home Massage*: Massage therapy conducted at a client's home or residence.
- (i) *Massage Therapy or Massage*: Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulation 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, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in the practice. Massage as defined herein does not include the touching in any fashion of human genitalia.

- (j) *Massage Therapy Establishment (or Massage Establishment or Establishment)*: Any establishment where any person, firm, partnership, association, or corporation primarily engages in offering massage therapy services. An establishment may operate from a business or corporate location or in the establishment licensee's home subject to the requirements of this chapter and the Development Regulations of the City.
- (k) *Massage Therapy (therapeutic)*: The practice of therapeutic massage as the application of various techniques to the muscular structure and soft tissue of the human body, as a healing art, strictly non-sexual, requiring proof of education, training or education from an institution or business with accreditation recognized by the State, or as apprentice to a licensed therapeutic massage therapist.
- (l) *Massage Therapist*: Any person who, for any consideration whatsoever, engages in the practice of massage as herein defined.
- (m) *Patron*: 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 therefore, provided a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist only if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.

Sec. 26-71 Exceptions.

The provisions of this Article shall not apply to hospitals, nursing homes, sanitariums, or persons holding an unrevoked certificate to practice the healing arts, persons licensed to practice as a registered professional nurse under the laws of the State of Kansas, persons licensed to practice as a physical therapist under the laws of the State of Kansas, or persons working under the direction and supervision of any licensed healing arts practitioner or in any such establishment, nor shall this Article apply to barbers or cosmetologists lawfully carrying out their particular profession or business and holding a valid, unrevoked license or certificate or registration issued by the State of Kansas.

Sec. 26-72 - 26-85 Reserved.

DIVISION 2 - MASSAGE BUSINESSES

Sec. 26-86 License Required.

DISCUSSION ITEM 4

Does the Governing Body wish to review all applications for a license? No other license comes before the Governing Body for approval other than a Cereal Malt Beverage License, which is required by State Statute. This license like all others could be processed and approved by the City Clerk following the requirements approved by the Governing Body in this ordinance.

No person, firm, partnership, association or corporation shall operate a massage establishment as defined herein, without first having obtained a business license therefor, issued by the *City Clerk or Governing Body* of this City. It is unlawful to conduct such a business unless the license issued is current, unrevoked and not suspended. A separate license shall be required for each and every separate place of business conducted by any one licensee. Such license shall be valid from January 1 to December 31 of each calendar year.

DISCUSSION ITEM 5

Sec. 26-87 Application for Massage Therapy Establishment License; Fees.

Every application for a business license to maintain, operate or conduct any establishment covered by this Article shall file an application with the City Clerk and pay an annual fee, as prescribed in Appendix F, which shall not be prorated, refundable or transferable and an annual renewal fee as prescribed in Appendix F, which shall not be prorated, refundable or transferable. *Sole Practitioners who own and operate an establishment and are the only massage therapist on the premises will only be required to pay the annual massage therapy establishment fee.*

The application for a license to operate any such establishment shall set forth the exact nature for the service to be provided, the proposed place of business and facilities and the name, address, and telephone number of each applicant.

In addition, any applicant for a business license shall furnish the following information:

- (a) Written proof that the applicant and manager(s) are at least 18 years old.
- (b) Copy of a valid government issued identification card.
- (c) Two portrait photographs at least two (2) inches by two (2) inches.
- (d) Fingerprints provided for new applications and applications that have lapsed for 1 year or more. Not required for annual renewals.
- (e) The business, occupation or employment locations and contact information for each applicant and manager for the three (3) years immediately prior to the date of application.
- (f) The massage therapy business license history of applicant and managers; whether such person, in previously operating in this or another City or State under an establishment or therapist license, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation.

DISCUSSION ITEM 6

- (g) *Proof that managers successfully completed an in-person (not online) certification program in American Heart Association CPR and American Red Cross first aid or equivalent in-person programs and provide current proof of certification.*
- (h) Any Criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and circumstances thereof.
- (i) In the case of applicants who intend to provide massage therapy, the applicant must also apply for and receive a massage therapist license as provided in this Article.

DISCUSSION ITEM 7

- (j) *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 the qualification of the establishment applicant for the license and the manager to work in a massage establishment.*
- (k) Applicants for renewal of an existing license need only that information or documentation necessary to insure up-to-date renewal application processing.

Sec. 26-88 **Massage Therapy Establishment License Application Processing.**

Upon receipt of a complete application for a “massage therapy establishment license”, *the City Clerk shall transmit one copy of the application to the Chief of Police for investigation of the application, which will include a background check.* In addition, the City Clerk shall transmit a copy of the application to the City Health Officer, as applicable. It shall be the duty of the Chief of Police to investigate such application to determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued the license. The Chief of Police shall report the results of the investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. It shall be the duty of the City Health Officer to determine whether the premises meets the requirement of this Article. The City Clerk shall verify that all zoning requirements are met. All standards for premises set forth in Sec. 26-89 must be met prior to the first day the premises opens for business. The City Health Officer shall report the results of their investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. Upon receipt of the reports from the Chief of Police, and City Health Officer, the City Clerk shall *issue the applicable license*

OR

schedule the application for consideration by the Governing Body at the earliest meeting consistent with the notification requirements established by law, provided the license application shall be approved or disapproved within 45 days from the date filed with the City Clerk's office. The applicant shall be notified of the date the Governing Body will consider the application, at which time the applicant will be afforded an opportunity to be heard.

Sec. 26-89 Inspection Necessary

No business shall be conducted on licensed premises until an inspection by the City Health Officer reveals that the establishment complies with each of the following minimum requirements:

- (a) The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition. Towels, linen, and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for more than one patron. Heavy white paper may be substituted for sheets provided that such paper is changed for every patron. No service or practice shall be carried on within any cubicle, room, booth, or any area within any permitted establishment, which is fitted with a door that can be locked.
- (b) Toilet facilities shall be provided in convenient locations. When five (5) or more massage establishment employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided.
- (c) Lavatories or washbasins provided with both hot and cold 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.
- (d) At least one water fountain, water cooler or bottled water shall be provide but shall not be located in toilet rooms or bathrooms.

The City Health Inspector shall certify that the proposed business establishment complies with all of the requirements of this Section and shall give or send such certification to the City Clerk and Chief of Police. Provided, however, that nothing contained herein shall be construed to eliminate other requirements of statutes or ordinances that relates to the maintenance of premises, not to preclude authorized inspection thereof.

Sec. 26-90 Issuance of Massage Therapy Establishment License.

After the filing of an application in the proper form, the *City Clerk or Governing Body* shall examine the application and after such examination, shall approve the issuance of the license for a massage therapy establishment, unless the *City Clerk or Governing Body* finds that:

- (a) The establishment operations, as proposed by the applicant, if permitted, would not comply with all applicable laws to include, but not limited to, the City's building, zoning and health regulations;
- (b) The applicant, if an individual, or any of the stockholders who holds more than 10% of the stock of the corporation, any of the officers and directors, if the applicant is a corporation; or any of the partners, to include limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, having been convicted of or diverted on,
 - (1) A person felony, as defined by Kansas law;
 - (2) A non-person felony, as defined by Kansas law, in the ten (10) year immediately preceding the date of the application;
 - (3) An offense involving sexual misconduct with children;
 - (4) Obscenity;
 - (5) Prostitution or Promoting prostitution or equivalent charge as defined by K.S.A. 21-3513;
 - (6) Solicitation of a lewd or unlawful act;
 - (7) Pandering or other sexually related offenses;
 - (8) Any violation of the law applicable to massage therapy arising out of the individual's prior massage establishment(s) or individual massage therapist license(s) in the ten (10) years preceding the date of the application.
- (c) The applicant made any false, misleading or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith;
- (d) The applicant or manager has had a massage therapy establishment or other similar permit or license denied, revoked, suspended or has voluntarily surrendered the permit or license in lieu of revocation or suspension for any of the above causes by the City or any other State or local agency within ten (10) years prior to the date of the application;
- (e) Any establishment applicant or manger has previously been issued a license for an adult entertainment business or escort service or has been employed by any such establishment;
- (f) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, to include limited partners, if the applicant is a

partnership; and the manager or other person principally in charge of the operation of the business, has not attained the age of 18 years; and

- (g) The manager or other person principally in charge of the operation of the business would be ineligible to receive any license under the provisions of this Article.

The record of the Governing Body shall show the action taken on the application, and if the license is granted. The Governing Body shall direct the City Clerk to issue the proper license.

Or

The City Clerk shall issue the proper license. The license shall state that it is not transferable or refundable. The license shall be kept posted in an open and conspicuous place on the premises of the licensee. If an application is denied, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant, and the notice shall state the basis for the disapproval.

Sec. 26-91 Inspection, Immediate Right of Entry.

The Police Department and City Health Inspector may from time to time make an inspection of each licensed establishment in the City, to include those locations where an establishment conducts its business and areas where a therapist performs massage therapy, to determine that the provisions of this Article are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any licensee, manager or representative to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner. Provided further, that any failure on the part of any licensee, manager or representative to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee license.

Sec. 26-92 Operation Regulations.

The operation of any massage therapy establishment, to include the provision of service by massage therapists, shall be subject to the following regulations:

DISCUSSION ITEM 8

- (a) *Hours.* Such business shall be closed and operations shall cease between the hours of **10:00 p.m. and 6:00 a.m.** each day provided the hours of operation for in-office massage therapy may be extended for in-office therapy conducted on premises with established evening and night shifts.
- (b) *Alcoholic beverages.* No alcoholic beverage or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted or suffered to be done in or upon any premises licensed

under the provisions of this Article or during in-office massage therapy. **Provided this restriction shall not apply to businesses where the licensed massage therapy is accessory to the predominant business purpose of the establishment,** provided further, no alcohol is permitted on that portion of such premises where massage therapy occurs. As used in this Section, “that portion” shall mean physical, visual and audible separation by permanently installed walls and doors between the area where massage therapy occurs and the area where alcoholic beverages or cereal malt beverages are sold or consumed.

- (c) *Conduct of premises.* All licensees licensed under the provisions of this Article shall at all times be responsible for the conduct of business on their licensed premises and for any act or conduct of his or her employees which constitutes a violation of the provisions of this Article. Any violation of the City, State, or federal laws committed on the licensed premises by any such licensee or employee affecting the eligibility or suitability of such person to hold a license or may be grounds for suspension or revocation of same.
- (d) Every portion of a licensed establishment to include appliances and personnel shall be kept clean and operated in a sanitary condition.
- (e) Provision for a separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing. **(IN HOME BUSINESSES??)**
- (f) All licensed employees and massage therapists must be modestly attired. Diaphanous or transparent clothing is prohibited. Clothing must, at all times, cover the chest of the licensee, employees and/or massage therapists.
- (g) The private parts of patrons must be covered by towels, cloths or undergarments when in the presence of an employee or massage therapist. Any contact with a patron’s genital area is prohibited.
- (h) All licensed establishments, when applicable, shall provide clean, laundered sheets and towels in sufficient quantity and such items shall be laundered after each use thereof and stored in a sanitary manner.
- (i) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs or individual soak areas shall be thoroughly cleaned after each use.
- (j) Table showers are strictly prohibited.
- (k) No individual shall reside, inhabit or otherwise sleep overnight at an establishment with the exception of the licensee who operates an establishment in his/her home or residence

but shall not reside, inhabit or sleep in the portion of the home or residence devoted to the practice of massage therapy. (separate “studio” set apart from the rest of the house)???

Sec. 26-93 Supervision.

A licensee shall have the premises supervised at all times when open for business. The licensee or a person employed as a Massage Therapist shall personally supervise the business and shall not violate or permit others to violate, any applicable provision of this Article. The violation of any such provision by any agent or employee of the licensee shall constitute a violation by the employee.

Sec. 26-94 Employee and Patron Register.

- (a) All establishments licensed under the provisions of this Article shall keep and maintain on their premises a current register of all their establishment representatives and list such employee’s name, address and license number. Such register shall be open to inspection at all reasonable times by the City Health Officer or member of the Police Department.
- (b) Every person who engages in or conducts a licensed establishment shall keep a daily register of services provided and all patrons, with names, addresses, and hours of arrival and, if applicable, the rooms or cubicles assigned. Said daily register shall, at all times during business hours, be subject to inspection by City officials and by the Police Department and shall be kept on file for one (1) year.

Sec. 26-95 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, *provided a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian authorized such therapy in writing.*

Sec. 26-96 Advertising.

No establishment granted a license under provision of this Article shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of a human body that would reasonably suggest to prospective patrons that any service is available other than those services as described in Sec. 26-70, or that employees or massage therapists are dressed in a manner other than described in Sec. 26-92.

DISCUSSION ITEM 9 (will be discussed under item 11)

Sec. 26-97 Application of Existing Businesses.

The operators of any existing massage therapy establishment must comply with all provisions of this Article, *subject to the education and experience requirement set for the in Sec. 26-131.*

Sec. 21-98 Revocation or Suspension of Business License.

- (a) Any business license issued for a massage therapy establishment may be suspended or revoked by the City Clerk or Chief of Police for a violation of any of the provisions of this Article or the licensee or any establishment representative was convicted of any offense which would make them ineligible to receive a license; or in any case, in which the licensee or an establishment representative refused to permit, or hindered any City representative to conduct any investigation or inspection provided for this Article.

- (b) Written notice shall be sent to the person entitled to notice as stated in the business license and at the location specified in the license for notice. This notice shall state the specific basis for suspension or revocation and shall notify the licensee of the licensee's right to a hearing before the *City Manager or Governing Body* to appeal the suspension or revocation. Any of the following shall establish a sufficient basis for suspension or revocation of the business license, if a licensee, its employee, or agent:
 - (1) Is convicted of any offense which is a felony, the record of conviction being conclusive evidence thereof;
 - (2) Supplies false information to the permit administrator or Police on the application for license or licensure renewal;
 - (3) Allows the use of his or her establishment by an unlicensed person;
 - (4) Violates any zoning, building or fire prevention ordinance;
 - (5) Uses fraudulent, false, misleading or deceptive advertising to describe, promote or advertise any type of business activity or service which is expressly not massage therapy or has otherwise fraudulently engaged in massage therapy;
 - (6) Has been convicted, to include a massage therapist, of any offense found in Sec. 26-98 and Sec. 26-133 herein and the licensee has actual or constructive knowledge of the violation or conviction;
 - (7) Conducts any illegal activities or allows them to be conducted by anyone else;
 - (8) Has an arrest record for any sexual offense or violation;
 - (9) Has fraudulently obtained a license pursuant to the provisions of this ordinance;
 - (10) Has ceased to meet any of the requirements for issuance of a massage therapy license or massage therapy establishment license;

(11) Refused to permit any duly authorized police officer or City Health Officer to inspect the premises or operations of the licensee;

(12) Fails to comply with all applicable laws and regulatory provisions herein.

(c) *Business Closed and Posted.* Upon suspension or revocation of the business license, the business shall cease to operate and the Chief of Police or City Clerk shall post the business as closed.

DISCUSSION ITEM 10

Sec. 26-99 Appeal.

Upon receipt of a written request delivered to the City Clerk, an appeal of the denial, suspension or revocation shall be heard by the *Governing Body or City Manager* within thirty (30) days of the suspension or revocation. The licensee may submit evidence at the hearing, which is relevant and material to the specific basis for suspension or revocation. The *Governing Body or City Manager* shall make a final determination as to denial, suspension or revocation.

Sec. 26-100 - 26-130 Reserved.

DIVISION 3 – MASSAGE THERAPISTS

Sec. 26-131 Massage Therapist License Required Categories, Educational Requirement, Renewal & Restrictions.

No person shall perform massage therapy, in-client's home massage or in-clients' office massage therapy within the City, unless he or she has a valid massage therapist license issued by the City pursuant to the provision of this Article. It is unlawful to perform such services unless the license issued is current, unrevoked and not suspended. Such license is not transferable or refundable and shall be valid from January 1 to December 31 of each calendar year.

DISCUSSION ITEM 11

The massage therapist license and educational requirement shall be as follows:

(a) Successful completion of a course of instruction of not less than *500/250/or some other number of hours*, in theory, method or practice of massage from one or more accredited schools. All practical and/or modality instruction must be completed as in-class/hands-on instruction, while theory instruction may be completed online. *The applicant must also*

have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent and provide current certification.

(b) Proof of successful passage of the Board Certification exam administered by the National Certification Examination for Therapeutic Massage and Bodywork. —

Proof of completion of education and training requirements must be by *certified transcripts*. The educational training requirements required by the Article may be received from more than one school. An hour of instruction is defined as fifty minutes of actual instructional time.

All applications for renewal of a massage license in any category must provide proof of recertification in *American Red Cross first aid and American Heart Association CPR* or the equivalent thereof prior to the approval of any renewal.

All licensed massage therapists who apply for a renewal license must show proof that they received a minimum of twelve hours (fifty minutes per hour) of professional massage continuing education in the preceding twelve-month period. One hour continuing education credit will be awarded for each hour of attendance at programs that relate to the theory or clinical application of theory pertaining to the practice of massage to include, but not limited to clinical business practices, hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, client interaction and State and local laws that are sponsored by a university, junior college or otherwise found to be acceptable by the City Clerk.

Possible language to Grandfather existing therapists

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 as long as there are no lapses in active licensure and the individual continues to satisfy all other requirements of this Article.

DISCUSSION ITEM 12

Sec. 26-132 Application for Massage Therapist License, Fees.

- (a) Any person who desires to perform or provide massage therapy in-client's home massage; in-clients' office massage therapy; or to perform any massage services in a massage therapy establishment, as defined therein, shall file a written application with the City Clerk and pay a fee as prescribed in Appendix F, which shall not be prorated, refundable or transferable and an annual renewal fee as prescribed in Appendix F. A massage therapy license shall be valid from January 1 to December 31 of each calendar year.

- (b) Only one massage therapy license shall be required for a massage therapist regardless of the number of location types where he/she intends to practice – in an establishment, in-clients’ office and/or in-clients’ home. *However, a separate identification card is required for each location type. The fee for each identification card subsequent to the initial card shall be as prescribed in Appendix F. The identification card fee is not prorated, refundable or transferable.*
- (c) Massage therapist shall notify the City of any change in employment within thirty (30) calendar days of the change to include a change in the therapist’s employer or the addition or reduction of locations they perform massage therapy.
- (d) Sole practitioners (who own and operate an establishment and are the only massage therapist on the premises), applying for a massage therapist license of any type and have successfully obtained a massage therapy establishment license are exempt from paying the massage therapist license fee. *However, a separate identification card is required for each location type. The fee for each identification card subsequent to the initial card shall be as prescribed in Appendix F. The identification card fee is not prorated, refundable or transferable.*

The application for a massage therapist license shall contain the following:

- (a) Name, address and telephone number.
- (b) Two (2) portrait photographs at least two (2) inches by two (2) inches.
- (c) Copy of a valid government issued identification card.
- (d) Applicant’s weight, height, color of hair and eyes.
- (e) Fingerprints provided for new applications and applications that have lapsed for 1 year or more. Not required for annual renewals.
- (f) Written evidence that the applicant is at least 18 years old.
- (g) Business, occupation or employment of the applicant for the three (3) years immediately prior to the date of application.
- (h) Disclosure of any criminal convictions or diversions, except minor traffic violations, and fully disclose the jurisdiction in which convicted or diverted and the offense for which convicted or diverted.

DISCUSSION ITEM 13 (this is the same as item 7 as discussed for establishments)

- (i) *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 the qualification of the applicant for the license.*
- (j) Proof of the education and experience requirements set forth in Sec. 26-131.
- (k) History of the applicant, whether such person, in operation in Kansas or another state under an establishment license, a therapist license or under another name had such license revoked or suspended and the reason therefor.

Sec. 26-133 Application Process and Issuance of Massage Therapist License.

Upon receipt of a complete application for a massage therapist license, the City Clerk shall transmit one copy of the application to the Chief of Police for investigation of the application, which will include a background check. The City Clerk shall issue a massage therapist license within 21 days following application unless there are findings that:

- (a) The applicant for the massage therapist license has been convicted of, or diverted on:
 - (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 the application;
 - (3) An offense involving sexual misconduct with children;
 - (4) Obscenity;
 - (5) Prostitution or Promoting prostitution as defined by K.S.A. 21-3513;
 - (6) Solicitation of a lewd or unlawful act;
 - (7) Pandering or other sexually related offense;
 - (8) Any violation of the law applicable to massage therapy arising out of the individual's prior massage establishment(s) or individual massage therapist license(s) in the ten (10) years preceding the date of the application.
- (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) The applicant had a massage establishment or therapist permit or license denied, revoked, suspended, or involuntarily surrendered the permit or license in lieu of revocation or

suspension by the City or any other state or local agency within ten (10) years prior to the date of application.

- (d) The applicant was issued a license for an adult entertainment business or escort service or was employed by any such establishment within ten (10) years prior to the date of application.
- (e) The applicant has not attained the age of 18 years.
- (f) That the correct license fee has not been tendered to the City, and in that case of a check or bank draft, honored with payment upon presentation;
- (g) That the applicant has not successfully completed the education standards required under the provisions of this Article.

The license shall state that it is not transferable or refundable. The license shall be kept posted in an open and conspicuous place on the premise of the licensee. If an application is denied, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant, and the notice shall state the basis for the disapproval. Appeals shall be in accordance with Sec. 26-135.

Sec. 26-134 Revocation of Massage Therapist License.

- (a) Any Massage Therapist license issued for a massage therapist may be suspended or revoked by the City Clerk or Chief of Police for a violation of any of the provisions of this Article or the licensee or any establishment representative was convicted of any offense which would make them ineligible to receive a license; or in any case, in which the licensee or an establishment representative refused to permit, or hinder any authorized City inspector or representative to conduct any investigation or inspection provided for in this Article.
- (b) Written notice shall be sent to the person entitled to notice as stated in the Massage Therapist license and at the location specified in the license for notice. This notice shall state the specific basis for suspension or revocation and shall notify the licensee of the licensee's right to a hearing before the *City Manager or Governing Body* to appeal the suspension or revocation. Any of the following shall establish a sufficient basis for suspension or revocation of the Massage Therapist license, if a licensee:
 - (1) Is convicted of any offense which is a felony, the record of conviction being conclusive evidence thereof;
 - (2) Supplies false information to the permit administrator or Police on the application for licensure or licensure renewal;

- (3) Uses fraudulent, false, misleading or deceptive advertising to describe, promote or advertise any type of business activity or service which is expressly not massage therapy or has otherwise fraudulently engaged in massage therapy;
 - (4) Convicted of any offense found in this Article;
 - (5) Conducts any illegal activities;
 - (6) Has an arrest record for any sexual offense or violation;
 - (7) Has fraudulently obtained a license pursuant to provision of this ordinance;
 - (8) Has ceased to meet any of the requirements for issuance of a massage therapy license;
 - (9) Refuses to permit any duly authorized police officer or City Health Officer to inspect the records of the operations of the licensee;
 - (10) Fails to comply with all applicable laws and regulatory provisions herein.
- (c) Upon suspension or revocation of the Massage Therapist license, the Massage Therapist shall cease to operate in the City of Leavenworth.

DISCUSSION ITEM 14

Sec. 26-135 Appeal.

Upon receipt of a written request delivered to the City Clerk, an appeal of the denial, suspension or revocation of a Massage Therapist License shall be heard by the *Governing Body or City Manager* within thirty (30) days of the denial, suspension or revocation. The licensee may submit evidence at the hearing, which is relevant and material to the specific basis for suspension or revocation. The *Governing Body or City Manager* shall make a final determination as to suspension or revocation.

Sec. 26-136 Severability.

In the event that any portion or section of this Article is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, the decision shall in no manner affect the remaining portions or sections of this Article, which shall remain in full force and effect.

Sec. 26-137 - 26-175 Reserved.