

# RECORD OF ORDINANCES

Ordinance No. 2017-5

July 10, 2017

## City of Bellbrook

### Ordinance No. 2017-5

#### **An Ordinance Deleting Chapter 848 “Massage Establishments and Technicians” of the Bellbrook Municipal Code in its Entirety and Replacing with Chapter 848 “Massage Service Establishments.”**

WHEREAS, the City of Bellbrook has enacted Chapter 848 of the Bellbrook Municipal Code which is entitled “Massage Establishments and Technicians”; and

WHEREAS, the purpose of Chapter 848 is to protect the peace, health, safety and welfare of the citizens of Bellbrook; and

WHEREAS, the City desires to delete the entire content of Chapter 848 and replace it in its entirety with new regulations.

#### **Now, Therefore, The City of Bellbrook Hereby Ordains:**

Section 1. That the following sections of Section 848 of the Bellbrook Municipal Code be deleted in their entirety:

- §848.01 Definitions.
- §848.02 Licenses required.
- §848.03 Application for licenses; information required.
- §848.04 Investigations; issuance and effective period of licenses; periodic inspections.
- §848.05 Fee
- §848.06 Posting of licenses
- §848.07 Transfer of licenses
- §848.08 Revocation of licenses; appeals
- §848.09 Hours
- §848.10 Exemptions
- §848.11 Alcoholic beverages; peace disturbances

Section 2. That the following additions to Chapter 848 “Massage Service Establishments” of the Bellbrook Municipal Code be approved with additions shown by italics and underlined.

#### 848.01 Definitions.

- (a) *"Applicant" means a person who has applied for a permit to operate a massage services establishment in the City of Bellbrook.*
- (b) *"Licensed massage therapist" means a person who is licensed under Chapter 4731 of the Ohio Revised Code to practice massage therapy in the State of Ohio.*

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- (c) "Massage service" means any method of exerting pressure on, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external soft tissue of the body with the hands, or with the aid of any mechanical or electrical apparatus or appliance in exchange for anything of value.
- (d) "Massage services establishment" means a place of business or establishment permitted under this section where massage therapy services are provided.
- (e) "Massage therapy" means the treatment of disorders of the human body by the manipulation of soft tissue through the systematic external application of massage techniques including touch, stroking, friction, vibration, percussion, kneading, stretching, compression, and joint movements within the normal physiologic range of motion; and adjunctive thereto, the external application of water, heat, cold, topical preparations, and mechanical devices.

## 848.02 Permit Required; Prohibited Conduct; Exemptions.

- (a) It shall be unlawful for any person to offer or perform massage therapy or massage services in the City of Bellbrook unless that person is a licensed massage therapist with the State of Ohio.
- (b) It shall be unlawful for any person to operate a massage services establishment in the City of Bellbrook unless both of the following applies:
  - (1) The owner or manager is a licensed massage therapist in the State of Ohio.
  - (2) Massage therapy and massage services provided in the massage services establishment are performed exclusively by a licensed massage therapist in the State of Ohio.
- (c) It shall be unlawful to employ a person to perform massage therapy or massage services in a massage service establishment in the City of Bellbrook unless that person is a licensed massage therapist in the State of Ohio.
- (d) It shall be unlawful for a person to operate a massage services establishment in the City of Bellbrook without obtaining a Certificate of Zoning Compliance to operate a massage services establishment from the City of Bellbrook.
- (e) Prohibited Conduct. No person that is providing massage services in the City of Bellbrook shall knowingly do any of the following at, upon or within a massage services establishment or elsewhere:
  - (1) Place his or her hand upon, touch with any part of his or her body, fondle in any manner, or massage the sexual or genital area of any other person;
  - (2) Perform, offer, or agree to perform any act which would require the touching of the sexual or genital area of any other person;
  - (3) Touch, offer or agree to touch the sexual or genital area of any other person with any mechanical or electrical apparatus or appliance;

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- (4) Wear unclean clothing, no clothing, transparent clothing, or clothing that otherwise reveals the sexual or genital areas of the masseur or masseuse;
- (5) Uncover or allow the sexual or genital area of any other person to be uncovered while providing a massage;
- (6) Perform, offer or agree to perform a massage with or without compensation to any individual less than eighteen years of age.
- (f) Exceptions. The provisions of this Chapter shall not apply to the following:
  - (1) Hospitals, medical facilities and public health centers (all as defined in Ohio Revised Code section 3701.01);
  - (2) A person licensed or registered by the State of Ohio Medical Board (other than a Massage Therapist) while performing his/her licensed or registered profession;
  - (3) A licensed cosmetologist, registered barber, registered barber apprentice, licensed chiropractor, licensed podiatrist, licensed nurse, or any other licensed health professional while performing his/her licensed or registered profession; and
  - (4) A person working under the direct supervision of individuals or establishments mentioned in this subsection (g) while performing his/her licensed or registered profession.
  - (5) As used in this subsection (g) "licensed" means licensed, certified, or registered to practice in the State of Ohio.

## 848.03 Permit Application Process.

- (a) Permit for Massage Service Establishments. The Chief of Police, or his or her designee is responsible for granting, denying, revoking, and renewing Massage Services Establishment permits. A person who wishes to operate a massage practice must submit a current valid Certificate of Zoning Compliance to the City of Bellbrook Chief of Police or his/her designee and an Application for Massage Service Establishment. The Application for Massage Service Establishment shall be accompanied by the following information:
  - (1) Full legal name and current residential address of the applicant(s);
  - (2) The address of the proposed massage services establishment;
  - (3) The names of any persons who will perform massage therapy at the massage services establishment and copies of all licenses of those persons;
  - (4) A list of other services to be offered at the massage services establishment;
  - (2) The website of the massage services establishment, if applicable;

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- (3) All felony and misdemeanor convictions, of the applicant excluding those for traffic offenses;
- (4) A copy of the license provided by the State Medical Board of Ohio for the owner and/or manager and each person who will practice massage therapy at the massage services establishment.
- (5) A printed form, signed by each and every owner of the parcel of real property which is the proposed location of the massage services establishment, whereby each such owner certifies that he/she/it understands and acknowledges that a massage services establishment will be located on said parcel of real property; and
- (6) Any other information requested at the time of application.

(b) Each individual that performs Massage Services in the City shall be required to obtain a permit from the Chief of Police or his/her designee. Such permits are non-transferable. Before any individual may be issued a permit, he or she shall submit on a form to be provided by the City the following information:

- (1) The individual's name and a personal or business address where mail may be delivered.
- (2) The address where massage services will be performed; and
- (3) A copy of the license provided by the State Medical Board of Ohio.
- (4) For renewals, a statement that the applicant has not violated and provision of this Chapter.

A permit granted pursuant to this section shall be subject to annual renewal by the Chief of Police upon the written permit application of the individual and a finding by the Chief of Police that the individual has not committed any act during the existence of the previous permit period which would be grounds to deny the initial permit application.

- (c) Applications shall be submitted and approved before a massage services establishment can be operated and massage services offered.
- (d) Once an application is submitted, the applicant shall receive a response in writing no later than 30 days after the date of submission.
- (e) In the event that an application is denied, the applicant may submit a new application.

## 848.04 Issuance of Permit; Expiration and Renewal.

- (a) Upon approval of an application, an applicant shall be provided with a Massage Services Establishment permit to operate a massage services establishment or a Massage services provider permit (as the case may be).
- (b) Each permit shall contain the following information:

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- (1) The name of the applicant and address of the massage services establishment where services will be performed;
- (2) A signature from an administrator; and
- (3) The effective dates of the permit.
- (c) Each permit shall be valid for a maximum of 1 year. Regardless of the date issued all permits shall expire on December 31 of the year they were issued.
- (d) No later than 90 days before the expiration date of a permit to operate a massage services establishment, the permit holder shall be notified in writing of the expiration of the permit.
- (e) No later than 30 days before the expiration date of a permit to operate a massage services establishment or provide massage services, the permit holder shall submit a new application pursuant to Section 848.03 of this section.
- (f) Upon approval of the application, the applicant shall be provided with a new Permit to operate a massage services establishment.

## 848.05 Facility Requirements.

- (a) A permit issued under Section 848.04 of this section must be displayed in a conspicuous location.
- (b) All tables and surfaces in the massage services establishment shall be clean and disinfected.
- (c) Clean linen, towels, and other materials used in connection with provided massage therapy services shall be stored in a closed cabinet.
- (d) The permit holder shall comply with any other requirement for operation as a business that is set forth in the Codified Ordinances of the City of Bellbrook.

## 848.06 Prohibitions.

- (a) No individual shall advertise or offer massage services, massage therapy, relaxation massage, or a related service unless that individual is a state-licensed massage therapist and holds a permit issued under Section 848.04 of this section.
- (b) No individual shall advertise massage services or a related service using sexual or provocative words or images. No individual shall advertise massage services or a related service with the suggestion or promise of a sexual service or activity.
- (c) No person who has been issued a permit to operate a massage services establishment shall employ any individual under the age of 18.

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## 848.07 Change of Information.

- (a) In the event that information submitted as part of the application process changes, the permit holder shall notify the City of Bellbrook with ten (10) days of such change.
- (b) Failure to update information in a timely manner may result in a suspension or revocation of a permit and a first degree misdemeanor. A separate offense shall be deemed committed each day during on which or which a violation on non-compliance occurs or continues.

## 848.08 Inspections.

- (a) Any of the following individuals may conduct inspections to determine compliance with this section and other applicable state and local laws:
  - (1) A police officer;
  - (2) The Greene County Health Commissioner or their designee;
  - (3) A building inspector appointed by the City of Bellbrook;
  - (4) Any other person authorized by the City of Bellbrook to conduct inspections of a massage services establishment; or
  - (5) A representative of the State Medical Board of Ohio.
- (b) Inspections shall be conducted at any time.
- (c) Inspections shall be conducted at least once per year to determine compliance with this section.
- (d) Permit holders shall be given 10 days from the date of inspection to correct any violations of this section. Permit holders shall immediately correct any issues found to be in compliance with Section 848.05, Facility Requirements.

## 848.09 Penalties; Revocation of Permit.

- (a) Any individual who advertises, offers or performs massage therapy or massage services in violation of this Chapter is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during on which or which a violation on non-compliance occurs or continues.
- (b) Any individual who holds a permit issued under Section 848.04 of this Chapter who violates any provision of this Chapter is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during on which or which a violation on non-compliance occurs or continues.
- (c) In addition to a fine, the following actions may be taken against an individual who holds a permit under Section 848.04 of this section and violates any provision of this section:

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- (1) An additional fine may be assessed;
- (2) A permit to operate a massage services establishment may be suspended for up to 90 days; and
- (3) After a third offense, a permit to operate a massage services establishment may be revoked.

## 848.10 Appeals; Hearings.

### (a) Appeals.

- (1) Any individual may appeal the denial or revocation of a permit to operate a massage service establishment or provide massage services.
- (2) Any individual who holds a permit to operate a massage service establishment may appeal the findings of an inspection conducted under Section 848.08 of this section.
- (2) Any individual may appeal a penalty assessed under Section 848.10 of this section.

### (b) Hearings. If an applicant has been denied a permit to operate a massage service establishment, or provide massage services, failed an inspection, or received a penalty under Section 848.09, the applicant or permittee, shall, within 3 business days, have the right to appeal to City Council from such denial, revocation or suspension. Notice of appeal shall be filed in writing with the Chief of Police who shall fix the time and place for hearing at the next meeting of City Council but not later than thirty (30) days thereafter. The Chief shall notify the Clerk of Council of the time and place of such hearing. Four members of Council shall constitute a quorum to hear such appeal. The appellant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of Council present at such meeting declare in favor of the applicant, such permit shall be forthwith issued or fully reinstated, as the case may be; otherwise, the order appealed from shall become final.

Section 3. This ordinance shall take effect and be in force from and after the earliest period provided by law.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Robert L. Baird, Mayor

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Jami L. Kinion, Clerk of Council

APPROVED AS TO FORM:

Patricia N. Campbell, Municipal Attorney