

RECORD OF ORDINANCES

Ordinance No. 3630

Passed March 27, 2018

AN ORDINANCE ADOPTING AMENDMENTS TO CHAPTER 117 OF THE CODE OF ORDINANCES OF WEST CARROLLTON, KNOWN AS "MASSAGE SERVICES ESTABLISHMENTS", TO INCLUDE SECTIONS 117.01, "DEFINITIONS" AND 117.02, "PERMIT REQUIRED; PROHIBITED CONDUCT; EXEMPTIONS" AND 117.03, "PERMIT APPLICATION PROCESS" AND "117.04, "ISSUANCE OF PERMIT; EXPIRATION AND RENEWAL" AND 117.05 "FACILITY REQUIREMENTS" AND 117.06, "PROHIBITIONS" AND 117.07 "TRANSFER OF PERMIT; CHANGE OF INFORMATION" AND 117.08, "INSPECTIONS" AND 117.09, "PENALTIES; REVOCATION OF PERMIT;" AND 117.10 "APPEALS; HEARINGS".

WHEREAS, an application has been filed by the City of West Carrollton proposing amendments to Chapter 117: MASSAGE SERVICE ESTABLISHMENTS, and;

WHEREAS, the City Council reviewed these proposals at its public work session on February 27, 2018, and requested they be introduced for consideration at the next regularly scheduled City Council Meeting; and

WHEREAS, notification of these items on the February 27, 2018, meeting agenda of the West Carrollton City Council was duly advertised; and

WHEREAS, approval of the proposed updates to Chapter 117, MASSAGE SERVICES ESTABLISHMENTS, Sections 117.01, 117.02, 117.03, 117.04, 117.05, 117.06, 117.07, 117.08, 117.09, and 117.10, is in the best interest of the citizens of West Carrollton.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, COUNTY OF MONTGOMERY, STATE OF OHIO, THAT:

Section 1: That by virtue of the authority vested in the City Council by the Charter for the City of West Carrollton, that Chapter 117, Massage Services Establishments, Sections 117.01, "DEFINITIONS;" 117.02, "PERMIT REQUIRED; PROHIBITED CONDUCT EXEMPTIONS;" 117.03, "PERMIT APPLICATION PROCESS;" 117.04, "ISSUANCE OF PERMIT; EXPIRATION AND RENEWAL;" 117.05 "FACILITY REQUIREMENTS;" 117.06, "PROHIBITIONS;" 117.07 "TRANSFER OF PERMIT; CHANGE OF INFORMATION;" 117.08, "INSPECTIONS;" 117.09, "PENALTIES; REVOCATION OF PERMIT;" 117.10 "APPEALS; HEARINGS" be adopted, as reflected in "Exhibit A" attached hereto.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limited to Section 121.22 of the Ohio Revised Code.

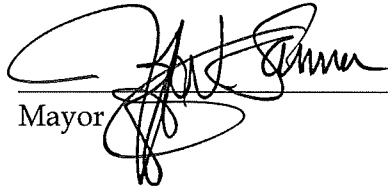
RECORD OF ORDINANCES

Ordinance No. 3630

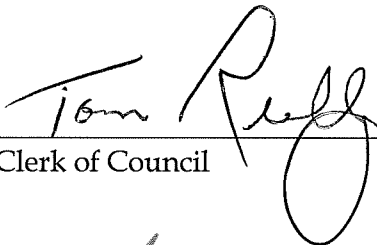
Passed March 27, 2018

Section 3: That this Ordinance shall take effect from and after the earliest period allowed by law.

PASSED by the Council of the City of West Carrollton, State of Ohio, this 27 day of MARCH, 2018.



Mayor

Attest: 

Clerk of Council

Effective Date: APRIL 26, 2018

CERTIFICATE

The undersigned, Clerk of Council of the City of West Carrollton, Ohio, hereby certifies the Ordinance to be a true and correct copy of Ordinance No. 3630, adopted on the _____, day of _____, 2018.

Clerk of Council

Dated: _____

EXHIBIT A

Revised

CHAPTER 117: MASSAGE SERVICES ESTABLISHMENTS

117.01 DEFINITIONS.

For the purpose of this Chapter the following words and phrases shall have the following meanings ascribed to them respectively.

- (A) **APPLICANT** means a person who has applied for a permit to operate a massage services establishment, or any individual who applies perform massages at a massage establishment in the City of West Carrollton.
- (B) **LICENSED MASSAGE THERAPIST** means any person who is licensed under Chapter 4731 of the Ohio Revised Code to practice massage therapy in the State of Ohio.
- (C) **MASSAGE** 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, and the City of West Carrollton Zoning Code, where massage therapy services are provided.
- (E) **MASSEUR or MASSEUSE** means any individual who performs massages at a massage establishment.
- (F) **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 normal physiologic range of motion; and adjunctive thereto, the external application of water, heat, cold, topical preparations, and mechanical devices.
- (G) **SEXUAL or GENITAL AREA** means the genitalia pubic area, anus, perineum of any person and the breasts of a female.

117.02 PERMIT REQUIRED; PROHIBITED CONDUCT; EXEMPTIONS.

- (A) After the effective date of this revised chapter all licensed massage therapists and massage service establishments operating in the City of West Carrollton shall obtain a permit to operate on or before December 31st.
- (B) It shall be unlawful for any person to offer or perform massage therapy or massage services in the City of West Carrollton unless that person is a licensed massage therapist with the State of Ohio.

- (C) It shall be unlawful for any person to operate a massage services establishment in the City of West Carrollton unless both of the following apply:
- (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.
- (D) It shall be unlawful to employ a person to perform massage therapy or massage services in a massage service establishment in the City of West Carrollton unless that person is a licensed massage therapist in the State of Ohio.
- (E) It shall be unlawful for that person to operate a massage services establishment in the City of West Carrollton without obtaining a Zoning Occupancy Certificate to operate a massage services establishment from the City of West Carrollton Planning and Community Development Department.
- (F) Prohibited Conduct. No person that is providing massage services in the City of West Carrollton 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;
 - (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 without parental consent.
- (G) Exceptions. The provisions of this Chapter shall not apply to the following:
- (1) Hospitals, medical facilities and public health centers (all as defined by Ohio Revised Code 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 profession.
 - (5) As used in this subsection (g) "licensed" means licensed, certified, or registered to practice in the State of Ohio.

117.03 PERMIT APPLICATION PROCESS.

- (A) The Chief of Police, or his/her designee, is responsible for granting, denying, revoking, and renewing Massage Services Establishment permits. A person who wishes to operate a massage services establishment must submit a current valid Zoning Occupancy Certificate to the City of West Carrollton Chief of Police or his/her designee and an Application for Massage Services 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;
 - (5) The website of the massage services establishment, if applicable;
 - (6) All felony and misdemeanor convictions of the applicant excluding traffic offenses;
 - (7) 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;
 - (8) A printed form signed by each and every owner of the real property which is the proposed location of the massage services establishment, whereby each owner certifies that he/she understands and acknowledges that a massage services establishment will be located on said parcel of real property, and;
 - (9) 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 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 any provision of this Chapter.
- (C) 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.
- (D) Applications shall be submitted and approved before a massage services establishment can be operated and massage services offered.
- (E) Massage service establishments that were in operation prior to the effective date of this section must submit an application not later than 90 days after the effective date of this section.
- (F) Once an application is submitted, the applicant shall receive a response in writing no later than 30 days after the submission.

- (G) In the event that the application is denied, the applicant may submit a new application.
- (H) Fees for the application shall be listed in the City of West Carrollton General Fee Schedule, Chapter 37 of the Codified Ordinances of the City of West Carrollton.

117.04 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 service establishment or a Massage Services provider permit (as the case may be).
- (B) Each permit shall contain the following information:
 - (1) The name of the applicant and address of the massage services establishment where services will be performed;
 - (2) A unique identification number;
 - (3) A signature from an administrator; and
 - (4) The effective dates of the permit.
- (C) Each permit shall be valid for a maximum of one year. Regardless of the date issued all permits shall expire on December 31st of the year they were issued.
- (D) 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 117.03 of this section.
- (E) Upon approval of the application, the applicant shall be provided with a new permit to operate a massage services establishment.
- (F) Said permit must be conspicuously displayed and visible upon entering the massage services establishment.

117.05 FACILITY REQUIREMENTS.

- (A) A permit issued under Section 117.04 of this section must be displayed in a conspicuous location within the massage services establishment.
- (B) All table 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 West Carrollton.

117.06 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 valid permit issued under Section 117.04 of this Chapter.

- (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.

117.07 TRANSFER of PERMIT; CHANGE OF INFORMATION.

- (A) An individual may transfer a permit to operate a massage services establishment to another individual by submitting a request in writing to the City of West Carrollton; a fee may be assessed for the transfer of permit as listed in the City of West Carrollton General Fee Schedule, Chapter 37 of the City of West Carrollton Codified Ordinances.
- (B) The City of West Carrollton shall respond within 10 days of receipt of the transfer request. If the transfer of permit is approved, then a new permit shall be issued.
- (C) The expiration date of the permit shall not be extended in the event that the permit is transferred.
- (D) In the event that information submitted as part of the application process changes, the permit holder shall notify the City of West Carrollton within 10 days of such a change.
- (E) 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.

117.08 INSPECTIONS.

- (A) Any of the following individuals may conduct inspections to determine compliance with this Chapter and other applicable state and local laws.
 - (1) A police officer;
 - (2) The Montgomery County Health Commissioner or designee;
 - (3) A building inspector or Code Enforcement Officer appointed by the City of West Carrollton;
 - (4) Any other person authorized by the City of West Carrollton to conduct inspections of a massage services establishment; or
 - (5) A representative of the State Medical Board of Ohio.
- (B) Inspections may be conducted at any time.
- (C) Inspections shall be conducted at least once per year to determine compliance with this Chapter.
- (D) Permit holders shall be given 10 days from the date of inspection to correct any violations of this Chapter. Permit holders shall immediately correct any issues found to be out of compliance with Section 117.05 of this Chapter.

117.09 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 of non-compliance occurs or continues.
- (B) Any individual who holds a permit under Section 117.04 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 of 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 117.04 of this Chapter and violates any provision of this section:
 - (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.

117.10 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 services establishment may appeal the findings of an inspection conducted under Section 117.08 of this Chapter.
 - (3) Any individual may appeal a penalty assessed under Section 117.09 of this Chapter.
- (B) Hearings.
 - (1) If an applicant has been denied a permit to operate a massage services establishment, or provide massage services, failed an inspection, or received a penalty under Section 117.09, 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 the hearing at the next meeting of City Council but not later than 15 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 the hearing, a majority of the members of Council present at such a meeting declare in favor of the appellant, such permit shall be forthwith issued or fully reinstated, as the case may be.
 - (2) If the majority of the members of City Council declare in opposition of the appellant, then the appellant may appeal such order to the County Court of Common Pleas. The appeal shall be in accordance with R.C. Chapter 2506.