

ORDINANCE NO 2022-1-O

AN ORDINANCE ENACTING CHAPTER 5.30 LINDON CITY CODE, REGULATING THE LICENSING AND OPERATIONS OF MASSAGE ESTABLISHMENTS WITHIN LINDON CITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Utah Code Annotated § 10-8-4 grants the City Council the authority to establish ordinances regulating business licenses within the municipality; and

WHEREAS, massage establishments impact the health, safety, and general welfare of the citizens of Lindon City; and

WHEREAS, there has been problems in neighboring cities and throughout the state with unlicensed massage therapists obtaining business licenses and conducting illegal activities through their business; and

WHEREAS, the City Council finds it is in the best interest of the citizens of Lindon City to prevent unlicensed massage therapists from obtaining a city business licenses; and

WHEREAS, the City Council finds that it is within its power to regulate the health, safety and welfare of its citizens through regulating business within its jurisdiction and that these regulations will help promote the health, safety or welfare of its citizens.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Lindon City, Utah County, State of Utah, as follows:

PART ONE: Enactment of Chapter 5.30 of the Lindon City Code.

Chapter 5.30 of the Lindon City Code, is hereby enacted as follows:

CHAPTER 5.30 **MASSAGE ESTABLISHMENTS**

SECTION:

- 5.30.010 DEFINITIONS.**
- 5.30.020 ZONING - CONDITIONAL USE PERMITTED REQUIRED**
- 5.30.030 LICENSE REQUIRED – APPLICATION.**
- 5.30.040 QUALIFICATIONS OF THE LICENSEE.**
- 5.30.050 SANITATION OF PREMISES.**
- 5.30.060 EMPLOYEES, INDEPENDENT CONTRACTORS AND LESSEES.**
- 5.30.070 HOURS OF OPERATION.**
- 5.30.080 LICENSE FEES.**
- 5.30.090 DISPLAY OF STATE AND CITY LICENSES.**
- 5.30.100 TRANSFER OF OWNERSHIP OF BUSINESS LICENSE PROHIBITED.**
- 5.30.110 PROHIBITED ACTS.**
- 5.30.120 DENIAL, SUSPENSION OR REVOCATION.**
- 5.30.130 APPEALS.**
- 5.30.140 VIOLATIONS.**

5.30.010 DEFINITIONS.

For the purposes of this Chapter, the words set out in this Section shall have the following meanings:

1. "Massage" means the same as Practice of Massage Therapy as defined in Utah Code § 58-47b-102, as may be amended.
 - a. "Massage" as used in this Section does not mean the manual or mechanical manipulation of soft tissue of the body by a licensed physician, chiropractor, or physical therapist.
2. "Massage Apprentice" means an individual licensed by the State of Utah under the Utah Massage Therapy Practice Act as a Massage Apprentice to work under the direct supervision of a licensed Massage Therapist.
3. "Massage Establishment" means any location, place, area, structure, or business used for the practice of Massage or instructing Massage for either a fee, a gratuity, or as a free service or as demonstrations.
 - a. "Massage Establishment" does not include the offices or facilities of a licensed physician, chiropractor, or physical therapist.
4. "Massage Establishment Business License" means a business license issued pursuant to the provisions of this Chapter.
5. "Massage Therapist" means an individual licensed by the State of Utah under the Utah Massage Therapy Practice Act as a Massage Therapist.
6. "Specified Anatomical Areas" means the same as defined in Section 8.30.040 of the Lindon City Code, as may be amended.
7. "Specified Sexual Activities" means the same as defined in Section 8.30.040 of the Lindon City Code, as may be amended.

5.30.020 ZONING - CONDITIONAL USE AND HOME OCCUPATION PERMIT REQUIRED.

1. Massage Establishments shall only be allowed as a Conditional Use in the CG, CG-A, CG-A8, CG-S, and MC zones within Lindon City.
2. A Massage Establishment may be permitted as a home occupation subject to the following conditions:
 - a. A home occupation for massage therapy must comply with all conditions and requirements set forth in this Chapter;
 - b. A home occupation for Massage Therapy must comply with all conditions set forth Section 17.04.400 of the Lindon City Code;
 - c. A home occupation for Massage Therapy shall not be allowed to have any employees or part-time equivalent employees. All Massage Therapy services provided in association with the home occupation shall be provided only by the home occupation permit holder.

5.30.030 LICENSE REQUIRED – APPLICATION.

1. Massage Establishment Business License Required: It is unlawful for any person to operate, conduct, carry on or maintain a Massage Establishment without meeting the requirements of this Chapter and obtaining a Massage Establishment Business License as required by this Chapter.

2. State License Required: It is unlawful for any person to operate a Massage Establishment or to engage in the business of a masseur or the practice of massage therapy in the city without first being licensed by the State of Utah as a Massage Therapist or Massage Apprentice.
3. Requirements for the Issuance of a Massage Establishment Business License: Every person desiring a Massage Establishment Business License shall file an application to the business license authority of the city. The application shall contain the following information:
 - a. A statement and verification that the applicant for a Massage Establishment Business License is of at least twenty-one (21) years of age;
 - b. A statement describing the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises and what fees and rates the applicant will charge for massages and other services.
 - c. A statement describing what rules, regulations or employment guidelines, if any, the applicant will implement to ensure compliance with state and local regulations;
 - d. A statement detailing the license or permit history of the applicant for the five (5) year period immediately preceding the date of the filing of the application, including whether such applicant has previously operated or is seeking to operate, in this or any other county, city, state or territory, has ever had a license, permit or authorization to do business denied, revoked, or suspended, or has had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction and state in full the reasons for the denial, revocation, or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application;
 - e. Written disclosures of all convictions of crimes involving moral turpitude within the past five (5) years of the applicant and all employees;
 - f. Proof that the applicant and all employees are licensed by the State of Utah as Massage Therapists or Massage Apprentices; and
 - g. Contact information for a responsible owner and/or operator who may be reached during all business hours.
4. Investigation of Licensee and Premises: All applications for a Massage Establishment Business License shall be referred to:
 - a. The Development Review Committee for zoning approval and to determine compliance of the premises with the provisions of the fire code;
 - b. The Lindon City Police Department for a search for any outstanding warrants and a criminal history for the applicant and each employee providing massage services;
 - c. The Utah County Health Department for investigation of the sanitary condition of the premises and compliance with applicable health regulations.
5. Obligation to Update Required Information: Any change in the information required to be submitted under this Chapter, including the name and DOPL license number of each new

employee providing massage services, shall be filed, in writing, with the City Recorder within fourteen (14) days of such a change occurring.

5.30.040 QUALIFICATIONS OF THE LICENSEE.

Each individual desiring a Massage Establishment Business License shall:

1. Be an individual at least twenty-one (21) years of age.
2. Have no convictions of crimes involving moral turpitude within the past five (5) years.
3. Possess a current State of Utah driver's license or identification card.
4. Be a citizen of the United States or be authorized to work within the United States by United States Department of Homeland Security.
5. Submit copies of current license issued by the State of Utah for each Massage Therapist or Massage Apprentice employed at the Massage Establishment.
6. Complete background checks for licensee and all employees. In the event that licensee or any employee is or has been the resident of another state within the last five (5) years, background checks must be conducted for that state(s).

5.30.050 SANITATION OF PREMISES.

Each Massage Establishment shall maintain its premises in compliance with state and county health regulations and shall ensure all patrons are provided with clean, sanitary, and opaque coverage capable of covering the patron's Specified Anatomical Areas. No common use of such coverings shall be permitted, and reuse of such coverings is prohibited unless they have been adequately cleaned and laundered. In addition, no owner, operator, managing employee, manager, employee, or masseur should administer a massage unless the patron has, at a minimum, a clean, opaque covering over their Specified Anatomical Areas.

5.30.060 EMPLOYEES, INDEPENDENT CONTRACTORS AND LESSEES.

1. The owner and operator of a Massage Establishment shall be responsible for all activities and services provide in or on the establishment's premises, regardless of whether or not a Massage Therapists or Massage Apprentice is an employee, independent contractor, or is otherwise a third-party lessee who has rented space within the Massage Establishment. Any violation of this Chapter by any of employee, independent contractor or lessee shall constitute a violation of the Chapter by the owner and operator of the Massage Establishment.
2. The owner and operator of a Massage Establishment shall be responsible to maintain current contact information, including residential addresses, and proof of licensure by the State of Utah for all employees, independent contractors, or lessees who provide massages or other services at the Massage Establishment.

5.30.070 HOURS OF OPERATION.

Massage Establishments may not be open or operated between the hours of 10:00 PM and 6:00 AM.

5.30.080 LICENSE FEES.

Licensing fees for a Massage Establishment Business License shall be the same as for other business licenses issued by the city and shall be paid pursuant to Section 5.04.130 of the Lindon City Code.

5.30.090 DISPLAY OF STATE AND CITY LICENES.

1. Every Massage Establishment licensed under this Chapter shall display its Massage Establishment Business License in a conspicuous place on the premises.
2. Every Massage Therapist or Massage Apprentice, while on the premises of a licensed Massage Establishment, shall maintain in his or her possession or immediate presence his or her state issued Massage Therapist or Massage Apprentice license or have it conspicuously displayed on the premises.

5.30.100 TRANSFER OF OWNERSHIP OF BUSINESS LICENSE PROHIBITED.

Massage Establishment Business Licenses granted under this Chapter shall not be transferable.

5.30.110 PROHIBITED ACTS.

The following acts are prohibited:

1. It is unlawful for any person to practice or engage in or attempt to practice or engage in massage, without first being licensed by the State of Utah as a Massage Therapist or Massage Apprentice.
2. It is unlawful for any Massage Establishment to employ or contract with, for the purpose of performing massage, any individual who is not licensed by the State of Utah as a Massage Therapist or Massage Apprentice.
3. It is unlawful to serve, store, allow to be consumed any alcoholic beverage on the licensed premises of a Massage Establishment.
4. It is unlawful for a Massage Therapist, a Massage Apprentice, an employee, or an independent contractor of a Massage Establishment to touch, massage, or apply any instrument or device, or offer to touch, massage, or apply any instrument or device, to the Specified Anatomical Areas of any person while on the premises of a Massage Establishment.
5. It is unlawful for a Massage Therapist, Massage Apprentice, employee, independent contractor, or customer of the Massage Establishment to display to any other person any Specified Anatomical Area or to engage in any Specified Sexual Activities while on the premises of the Massage Establishment.
6. It is unlawful for a premise licensed as a Massage Establishment to be used for the purpose of housing, sheltering or harboring, or cause to permit the same to be used as living or sleeping quarters by employees or other persons.
7. With the exception of bathrooms, dressing rooms, or any other room used for dressing purposes, no owner, operator, responsible managing employee, manager or licensee in charge of or in control of any Massage Establishment shall permit any person in any area within the Massage Establishment which is used in common by the patrons, or which can be viewed by patrons from such an area, unless the person's Specified Anatomical Areas are fully covered. Further, no owner, operator, responsible managing employee, manager, or licensee in charge of or in control of a Massage Establishment shall permit any person to be in any room with another person unless all the person present have their Specified Anatomical Areas completely covered.
8. It is unlawful for any owner, operator, or other person in charge of or in control of a Massage Establishment to permit any masseur or employee to be on the premises of a Massage Establishment during its hours of operation or while performing, or available to perform, any task or service associated with the operation of a massage business, unless the masseur or

employee is fully covered from the center of the kneecap to the base of the neck, excepting the hands and arms. Such covering must be of opaque material and maintained in a clean and sanitary condition.

9. It is unlawful for a Massage Establishment to hold itself out as a licensed facility or to advertise massage services to the public without being properly licensed by both Lindon City and the State of Utah.
10. It is unlawful for any person to hold themselves out as a licensed Massage Therapist or to advertise massage services to the public without being properly licensed by the State of Utah.
11. It is unlawful for any owner, operator, responsible managing employee, manager, licensee, or lessee in charge of or in control of a Massage Establishment to allow such establishment and its related massages and operations to be conducted in violation of the Utah Massage Therapy Practice Act, as set forth in Title 58, Chapter 47b of the Utah Code, as may be amended.

5.30.120 DENIAL, SUSPENSION OR REVOCATION.

1. Conditions of Denial, Suspension or Revocation: Any Massage Establishment Business License issued by the city may be suspended or revoked, and any application for any business license or for the renewal of any business license may be denied, by the business license authority upon a finding of a violation of the City Code or conviction of any of the following with respect to the licensee or licensee's operator or agent:
 - a. A violation of or a conviction for violating any ordinance regulating or governing the Massage Establishment for which said license was granted; or
 - b. A violation of or conviction for violating any other city ordinance or law of the state which affects the health, welfare or safety of its residents, including, but not limited to, a public nuisance, and which violation or conviction relates to the business so licensed or to be licensed; or
 - c. A violation of or conviction for violating an ordinance which violation or conviction resulted from the operation of the business so licensed; or
 - d. Any material misrepresentation or any fraud perpetrated on the licensing authority through application for, or operation of, said business.
2. Other Grounds Not Precluded: These violations shall not limit, but shall be in addition to, any other grounds for the denial, suspension or revocation of any license as provided for by ordinance or law.
3. Procedure: Prior to the denial, suspension, or revocation of any Massage Establishment Business License the following procedures must be satisfied:
 - a. Hearing Required: No suspension, revocation or denial of the renewal of a license by the city may until a hearing is first held before the business license authority, or an appointed hearing examiner.
 - b. Reasonable Notice: Notice of the time and place of the hearing, together with notice of the nature of the charges or complaints sufficient to reasonably inform the licensee or applicant and to enable him/her to answer such charges and complaints, shall be served

upon the licensee or applicant personally or by mailing a copy to the licensee or applicant at his or her last known address.

- c. A licensee or applicant shall have the right to appear at the hearing in person or by counsel, or both, present evidence, present argument on the licensee's or applicant's behalf, cross examine witnesses, and in all proper ways defend the licensee's or applicant's position.

5.30.130 APPEALS.

1. An applicant or license holder who has a Massage Establishment Business License denied, suspended or revoked, may appeal the decision to the City Administrator.
2. Notice of an appeal shall be filed with the City Administrator within fourteen (14) days of the decision denying or revoking the license.
3. The notice of appeal shall identify the appellant and set forth the grounds for the appeal.
 - a. If a notice fails to state the grounds for the appeal it may be summarily denied.
 - b. An appellant must present every theory of relief it is claiming to preserve that theory for review.
4. They may hear the appeal or may appoint an appeals officer to hear the appeal.
5. Upon receipt of an appeal, the City Administrator or appeals officer shall set an informal hearing as soon as practically possible (but not later than thirty (30) days after receipt of the request) in which the appellant and interested parties may address the city's decision.
6. The appellant has the burden of proving the city's decision was made in error.
7. The City Administrator or appeal officer shall review factual matters on the record and shall be limited to reviewing documents and information presented to the city licensing authority during the application or suspension/revocation process.
8. Any decision by the City Administrator or appeals officer shall:
 - a. Be issued in writing within fourteen (14) days of the meeting at which the appeal was heard;
 - b. Set forth the findings of the City Administrator or designated appeals officer; and
 - c. Be delivered in person or by first-class mail to the appellant.

5.30.140 VIOLATIONS.

Any person, firm, or corporation violating any provisions of this Chapter shall be guilty of a class B misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Chapter is committed, continued or permitted.

PART TWO: Amendment of Section 17.04.400(5)(c) of the Lindon City Code

Section 17.04.400(5)(c) of the Lindon City Code is amended as follows:

c. Except as provided for in Subpart (i) below, ~~H~~home occupations may have up to one (1) employee or part-time equivalent to one (1) employee who does not live in the dwelling unit work at the home. Only one (1) nonresident employee shall work from the home at any given time. Such employee working at the home or coming to the home and moving to another job site associated with the home occupation shall be provided an off-street parking stall on the home occupation owner's property. This employee shall be provided and required to use such parking on the business owner's property and off of a public street.

i. A home occupation for Massage Therapy, as approved pursuant to § 5.30.20 of the City Code, may not have any employees or part-time equivalent employees. All Massage Therapy services provided in the home occupation use must be provide only by the home occupation permit holder. For purposed of this section, Massage Therapy has the same meaning as set forth in §5.30.010, as may be amended.

PART THREE: Amendment of the Lindon City Land Use Table

The use of Massage Therapy is amended in the Lindon City Standard Land Use Table as follow:

Parking Group	Permitted Primary Use	Residential	Mix Rec.		Commercial							Industrial			R/B
		R1-12, R1-20, R)	RMU -W	RUM -E	PC -1	PC -2	CG	CG -A	CG A8	CG -S	MC	HI	LI	LI W	
6200	Massage Therapy Personal Care Health Spa	N	N	N	N	N	P	P	P	P	P	N	P	N	N
6200	Massage Therapy	N	N	N	N	N	C	C	C	C	C	N	N	N	N

PART FOUR: Severability.


Severability is intended throughout and within the provisions of this ordinance. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

PART FIVE: Effective Date.

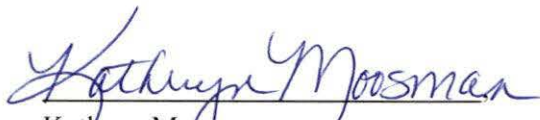
This ordinance shall take effect immediately upon its passage and posting as provided by law.

PASSED AND APPROVED AND MADE EFFECTIVE by the City Council of Lindon City,

Utah, this 7 day of February 2022.


CAROLYN LUNDBERG
Lindon City Mayor

ATTEST:


Kathryn Moosman
City Recorder



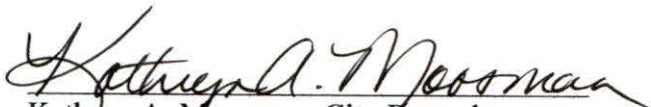
CERTIFICATE OF PASSAGE

STATE OF UTAH }
 }
COUNTY OF UTAH } ss.
 }

I, Kathryn A. Moosman, City Recorder of Lindon City, Utah do hereby certify and declare that the above and foregoing is a true, full, and correct copy of an ordinance passed and adopted by the City Council of Lindon City, Utah on the 2nd day of February, 2022 entitled:

AN ORDINANCE OF THE CITY COUNCIL OF LINDON CITY, UTAH ENACTING CHAPTER 5.30 OF THE LINDON CITY CODE, REGULATING THE LICENSING AND OPERATIONS OF MASSAGE ESTABLISHMENTS WITHIN LINDON CITY AND PROVIDING FOR AN EFFECTIVE DATE.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of Lindon City, Utah, this 3rd day of February, 2022.


Kathryn A. Moosman, City Recorder

(SEAL) LINDON CITY



AFFIDAVIT OF POSTING


STATE OF UTAH }
 } ss.
COUNTY OF UTAH }

I, Kathryn A. Moosman, City Recorder of Lindon City, Utah do hereby certify and declare that I posted the attached ordinance in three public places on the 3rd day of February 2022.

The three public places are as follows:

1. Lindon City Police Department
2. Lindon City Community Development Office
3. Lindon City Center


I further certify that the agenda of the meeting of the City Council containing notice of public hearing was published and posted according to law, and that copies of the ordinance so posted were true and correct copies of the original.


Kathryn A. Moosman, City Recorder

The foregoing instrument was acknowledged before me this 3 day of February, 2022 by Kathryn A. Moosman.

My Commission expires: January 7, 2025

Residing at: Utah County


Notary Public

