

Section 11-10. Massage Therapy Establishments.

Sec. 11-10.1. Purpose and legislative findings.

The Connecticut General Assembly has enacted legislation confirming that the practice of massage therapy is an activity affecting the public interest and involving the health, safety, and welfare of the public, and that the practice of massage therapy by a person which is not licensed under Chapter 384a of the Connecticut General Statutes (§ 20-206a *et seq.*) is harmful to the public health, safety, and welfare. The City Council agrees. Furthermore, the City Council finds that, for many massage establishments, the business in fact is sexual conduct or the facilitation of sexual conduct, rather than lawful massage therapy. Such establishments offer massage services as a subterfuge for prostitution, masturbation for hire, and other paid sexual contact, which are harmful to the public health, safety, and welfare. There is difficulty and expense in conclusively distinguishing between such establishments and legitimate massage establishments, but one rational distinction is whether the establishment has a relationship with a corporate or franchising hierarchy, which would tend to safeguard against unlawful sexual activities on the massage establishment premises. It is a purpose of this Section 11-10 to impose licensing requirements to help prevent illegal massage, prostitution, and related sex crimes, yet without hindering legitimate massage establishments operating under a business structure with external oversight that serves that purpose. C.G.S. § 19a-343(c)(14)(C) acknowledges the right of municipalities to regulate massage businesses or parlors that employ persons not licensed by the state or which significantly impact the safety of the surrounding area. An additional purpose of this Section 11-10, therefore, is to regulate the operation of massage establishments as an exercise of the City's police power, in order to protect the health, safety and general welfare of the citizens of the City.

Sec. 11-10.2. Definitions.

The following words, terms and phrases, when used in this Section 11-10, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any person, firm, corporation, or other legal entity applying for a license to operate a massage establishment, as defined herein.

Chief of Police means the Chief of the Police Department of the City of Danbury or his or her designee.

City means the City of Danbury, Connecticut.

Director of Health means the Director of Health of the City of Danbury or his or her designee.

Employee means any person who performs any service on the premises of a massage therapy establishment, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, apprentice, trainee, or otherwise. Employee does not include a person on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises.

Massage therapy has the same meaning as massage, and is the manipulation and/or treatment of soft tissues of the body, including but not limited to the use of effleurage, petrissage, pressure, friction, tapotement, kneading, vibration, range of motion stretches, a system of structured touch, pressure, movement, and holding to the soft tissue of the body, and any other soft tissue manipulation whether manual or by use of massage apparatus, and may include the use of water, oils, lotions, creams, lubricants, salt glows or scrubs, hydrotherapy, heliotherapy, hot packs, cold packs or other topical preparations. This term shall not include (1) diagnosis, the prescribing of drugs or medicines, spinal or other joint manipulations, (2) any service or procedure for which a license to practice chiropractic, physical therapy, naturopathy, podiatry, or medicine, is required by law, (3) touching of the scalp or ears while providing a haircut, or touching of the hands or feet while providing a manicure or pedicure, by a person licensed to do so pursuant to Chapter 387 of the Connecticut General Statutes, or (4) Thai yoga practiced by a person who is registered as a yoga teacher with the Yoga Alliance Registry and has completed two hundred hours of training.

Massage apparatus means any manual, mechanical, hydraulic, hydrokinetic, electric or electronic device or instrument or any device or instrument operated by manual, mechanical, hydraulic, hydrokinetic or electric power for the purpose of administering a massage.

Massage therapy establishment means a commercial establishment where, except as otherwise provided herein, any person offers or provides massage. This term shall not include schools, nursing homes, hospitals, rehabilitation facilities,

clinics or other professional health care establishments separately licensed as such by the state, and shall not include establishments that are accessory to hospitals, nursing homes, medical clinics, medical offices, health centers, gymnasiums, reducing salons, barber shops or beauty parlors, pursuant to the Zoning Regulations of the City of Danbury.

Premises means the real property, or portion thereof, upon which the massage establishment is located including, but not limited to, the establishment and the grounds, private walkways, and parking lots and/or parking garages under the ownership or control of the establishment.

Specified criminal activity means any of the following specified crimes:

- (a) illegal gambling;
- (b) prostitution, keeping a place of prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, sodomy, aggravated sodomy, rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, public indecency, or disorderly conduct on or about the premises;
- (c) obscenity, disseminating or displaying matter harmful to a minor, use of a child in a sexual performance, or commercial sex abuse of a minor;
- (d) any offense related to any massage therapy establishment, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, crimes involving trafficking in persons or sex trafficking, or crimes involving obscenity;
- (e) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (f) any offense in another jurisdiction that, had the predicate act(s) been committed in Connecticut, would have constituted any of the foregoing offenses.

U.N.I.T. means the City of Danbury Unified Neighborhood Inspection Team whose members are or may hereafter be appointed by the Mayor.

Sec. 11-10.3. Scope of regulations.

- (a) All licenses issued under this Section 11-10 shall constitute a mere privilege to operate the establishment specified in the license during the term of the license only, and shall be subject to all terms and conditions imposed by the city and state.
- (b) This Section 11-10 shall not be enforced against:
 - (1) Any natural person who is a physician, chiropractor, physical therapist, massage therapist, or similar professional licensed and regulated by or through the state while engaged in the practice of the profession for which the person is licensed by the state;
 - (2) Any other individual or entity expressly exempted from local legislation by the laws of the state.
- (c) All massage therapy establishments, shall comply with this section upon its effective date.
- (d) The Director of Health may exempt a massage therapy establishment from the licensing requirements of this Section 11-10 for a specified calendar year. An exemption under this Subdivision 11-10.3.(d) expires on December 31 of the year for which it was granted. Upon the expiration of an exemption, the establishment is subject to all requirements of Section 11-10. Any applications for future annual exemptions shall be filed no later than sixty (60) days before the date of expiration of the then current exemption. Any request for an exemption shall be submitted in writing to the Director of Health and is automatically rejected unless the Director of Health grants the exemption within thirty (30) days after submission. The Director of Health may require the establishment to supply information and documents relevant to the factors for exemption set forth below. An exemption, if granted by the Director of Health, shall be in writing and shall be within the discretion of the Director of Health based upon evaluation of the request after consideration of the following:
 - (1) Whether the establishment is part of a chain that operates in multiple locations under common ownership, franchise agreements, or a similar arrangement that involves centralized control or corporate supervision;

- (2) Whether all persons who provide services involving physical contact with customers at the establishment hold state licenses;
- (3) The establishment's, its owners', and its managers' histories relative to compliance with massage establishment licensing requirements;
- (4) Whether the location used by the establishment has been free from association with unlawful activity for the last twelve (12) months; and
- (5) Whether the establishment is operated by a person who has been continually licensed pursuant to the Connecticut Massage Therapy Act for a least for (4) years.

Sec. 11-10.4. Massage therapy establishment license required; application.

- (a) *Massage therapy establishment license required.* Except as otherwise provided in this Section 11-10, it shall be unlawful for any person or legal entity to operate a massage therapy establishment in the city without a valid massage therapy establishment license. The city shall not issue a massage therapy establishment license that would result in more than two (2) such establishments being licensed to operate simultaneously in the city unless otherwise permitted by the city's Zoning Regulations.
- (b) *Application.* No later than sixty (60) days after the effective date of this Section 11-10, any applicant who operates or proposes to operate a massage therapy establishment in the city shall file in person at the office of the Director of Health a completed application made on a form provided by the Director of Health. The application must be executed by the person primarily responsible for the operation of the establishment. If the applicant is a partnership, limited liability company, corporation, or other legal entity, the application must also be executed by an officer, member, partner or shareholder, as applicable. Signatures on the application shall be notarized. An application shall be considered complete when it contains the following information and/or items required in this Subdivision (b) of Subsection 11-10.4, accompanied by the regulatory fee:
 - (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.

- (2) A signed and sworn affidavit verifying the lawful presence in this country of each person that executes the application on behalf of the applicant.
- (3) Current business address and residential mailing address for the applicant.
- (4) The business name, location, legal description, mailing address and phone number of the establishment.
- (5) If the applicant is a sole proprietor, written proof of age, in the form of a driver's license or a picture identification document containing the applicant's date of birth issued by an agency of a state or of the federal government.
- (6) If the applicant is not a sole proprietor, then the partnership, limited liability company, corporation, or other legal entity shall submit a complete list of the legal entity's:
 - a. Officers;
 - b. Directors;
 - c. Partners, members, or shareholders (natural persons) holding a ten percent or greater ownership interest in such legal entity, or if there is no shareholder (natural person) with at least ten percent interest, the ten shareholders with the greatest ownership interest;
 - d. Employee(s) or agent(s) primarily responsible for operation and/or management of the massage therapy establishment; and
 - e. Written proof of age, in the form of a driver's license or a picture identification document containing the applicant's date of birth, issued by an agency of a state or of the federal government for each person listed in subparts a. through d. above.
- (7) A statement of whether the applicant or any person listed in response to subparagraph (b)(6) has been an owner, director, officer, partner, member, or shareholder of a massage therapy establishment that has, in the previous five (5) years (and at a time during which the person was so related to the establishment):

- a. been declared by a court of law to be a nuisance; or
 - b. had its license to operate a massage therapy establishment revoked or suspended.
- (8) A statement of whether the applicant or any person listed in response to Subparagraph (b)(6) has within the previous five (5) years been convicted of or pleaded guilty or entered a plea of nolo contendere to a specified criminal activity as defined in this Section, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each such conviction or plea.
- (9) A statement of whether the applicant or a person listed in response to Subparagraph (b)(6) has in the previous twelve (12) months resided with someone who has been an owner, director, officer, partner, member, or shareholder of a massage therapy establishment that has, in the previous five (5) years (and at a time during which the person was so related to the establishment):
- a. been declared by a court of law to be a nuisance; or
 - b. had its license to operate a massage therapy establishment revoked or suspended.
- (10) If the applicant is a partnership, limited liability company, corporation or other legal entity required to be incorporated under the laws of the state or authorized by the secretary of state to do business in the state, such entity must be incorporated under the laws of the state or authorized by the secretary of state to do business in the state and must submit copies of the certificate or incorporation, as applicable, or articles of organization, as applicable.
- (11) In the case of an applicant covered by subsection (10) above, a sworn and notarized statement of a registered agent who is a resident of Fairfield County, Connecticut and at least 18 years of age, required to be designated by a licensee to receive any process, notice or demand required or permitted by law or under this section to be served upon the applicant.
- (12) A statement whether the applicant is the owner of the premises wherein the establishment will be operated or the holder of a lease thereon for

the period to be covered by the license. If the applicant is a lease holder, a copy of the lease, as well as the written consent of the owner or its authorized agent, shall be submitted with the license application.

- (13) A \$15,000 surety bond, issued by a company approved to issue surety bonds by the Connecticut Insurance Commissioner, and in a form acceptable to the city's corporation counsel, payable to the city upon the entry of an injunction by a Connecticut Superior Court against operation of the applicant's massage therapy establishment after denial or revocation of a license pursuant to Subsection 11-10.9. below.
 - (14) For every person on the premises who offers, or intends to offer, massage therapy services for which a license under C.G.S. § 20-206a et seq. is required, a copy of the state license for each such person as well as a color photograph, no smaller than 2 inches by 2 inches, showing the face, neck, and shoulders of each such person. In addition, for each such employee, the application shall provide all information required by Subparagraphs (b)(1), (2), (4 (residential address only)), (5), (6)(c), (7) (8), and (9) above.
 - (15) A sworn statement by each person who executes the application on behalf of the applicant that (a) he or she has read and is familiar with the provisions of this Section 11-10, (b) copies of this Section 11-10 have been provided and will be provided to all persons who are or will be operating and/or managing the establishment, (c) such persons have been instructed and will be instructed that they will be responsible for ensuring compliance with all applicable provisions herein, and (d) the licensee shall undertake an ongoing and robust managerial program aimed at the prevention of specified criminal activities at the establishment.
 - (16) The information provided pursuant to this Subparagraph (b) shall be supplemented in writing by certified mail, return receipt requested, to the Director of Health within fifteen (15) days of a change of circumstances which would render the information originally submitted false or incomplete.
- (c) *Confidentiality of Information.* The information provided by an applicant in connection with an application for a license under this Section 11-10 shall be

maintained on a confidential basis, and such information may be disclosed to the public only to the extent required under governing law. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to any required disclosure under the Connecticut Freedom of Information Act or other applicable law.

- (d) *Issuance of license.* Upon the filing of a massage therapy establishment license application, the Director of Health shall promptly forward the application documents to 1) the Chief of Police, who shall conduct a prompt criminal background investigation of the applicant, and 2) the Zoning Enforcement Officer and Building Official for their reviews and reports on the establishment's compliance with the laws and regulations within these officials' respective jurisdictions. Such officials shall report to the Director of Health within thirty (30) days of their receipt of the application. Failure of such officials to report back to the Director of Health shall not be a basis for approval of the application. Within sixty (60) days of the filing of the application, the Director of Health shall either issue a license to the applicant or issue a written notice of intent to deny the license to the applicant pursuant to Subsection 11-10.9. The applicant shall be deemed qualified for a license, and the Director of Health shall issue the license, unless:
- (1) The applicant or a person listed in response to subsection (b)(6) is less than twenty-one (21) years of age.
 - (2) The applicant has failed to provide information required by this section for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The applicant is neither the owner of the premises wherein the establishment will be operated, nor the holder of a lease thereon for the period to be covered by the license.
 - (4) The fee required by Subsection 11-10.5. has not been paid.
 - (5) The establishment is not in compliance with any of the requirements of this Section 11-10.
 - (6) The city has revoked a massage therapy establishment license at the premises within the previous two (2) years.

- (7) The applicant or a person listed in response to Subparagraph (b)(6) has been an owner, director, officer, partner, member, or shareholder of a massage therapy establishment that has, in the previous five (5) years (and at a time which the person was so related to the establishment):
- a. been declared by a court of law to be a nuisance; or
 - b. had its license to operate a massage therapy establishment revoked or suspended.
- (8) The applicant or a person listed in response to Subparagraph (b)(6) has within the previous five (5) years been convicted of, or pleaded guilty or entered a plea of nolo contendere to, a specified criminal activity that constitutes a felony, or has within the previous two (2) years been convicted of, or found guilty or entered a plea of nolo contendere to, a specified criminal activity that constitutes a misdemeanor.
- (9) The establishment does not comply with all applicable zoning, building, health, and life safety laws and regulations, or the premises to be occupied does not have a valid, current certificate of occupancy. The requirement to comply with zoning is excused for an establishment that, on the effective date of this Section, qualifies as a valid prior nonconforming use under the City's Zoning Regulations.
- (10) The applicant or a person listed in response to Subparagraph (b)(6) has in the previous twelve (12) months resided with someone who has been an owner, director, officer, partner, member, or shareholder of a massage therapy establishment that has, in the previous five (5) years (and at a time during which the person was so related to the establishment):
- a. been declared by a court of law to be a nuisance; or
 - b. had its license to operate a massage therapy establishment revoked or suspended.
- (11) The license, if issued, would result in more massage therapy establishment licenses being in effect than authorized under Subparagraph (a) of Subsection 11-10.4.

- (12) The applicant is a partnership, limited liability company, corporation or other legal entity that is required to be organized under the law of the state or authorized by the secretary of state to do business in the state, but is not so organized or authorized.
- (13) The establishment does not comply with any of the following requirements:
 - (i) Construction of rooms used for toilets, tubs, steam baths, and showers shall be waterproofed with approved waterproofing materials;
 - (ii) Toilet facilities shall be provided in convenient locations. When the establishment can accommodate five or more employees and patrons of different genders on the premises at the same time, separate toilet facilities shall be provided for each gender. An additional toilet facility per gender shall be provided for establishments that can accommodate 20 or more employees or patrons on the premises at any one time. Toilet facilities shall be designated by gender.
 - (iii) Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet facility or a vestibule to it. Toilet facilities and wash basins shall be provided with soap in dispensers and with sanitary towels.
- (e) *Posting of License.* A license, if issued, shall be issued in the name of the applicant. The license shall be posted in a conspicuous place at or near the entrance to the establishment so that it may be read at any time when the establishment is occupied by patrons or is open to the public.
- (f) *Posting of State Massage Therapy Licenses.* Massage therapy establishments shall post each massage therapist license issued by the State to persons who perform massage therapy at the establishment in a conspicuous place at or near the entrance to the establishment so that it may be read at any time when the establishment is open to the public.

Sec. 11-10.5. Regulatory fee; expiration; no transfer.

- (a) *Fees.* There shall be an annual regulatory fee consisting of a nonrefundable investigative fee and a license fee, for each massage therapy

establishment licensed within the city. The investigative and license fees shall be set by resolution of the City Council and shall remain in effect until modified or amended by subsequent resolution adopted by the City Council. The full regulatory fee shall be paid with the license application. If the applicant withdraws the application or the license is denied, the applicant shall be refunded the license fee. No refund shall be allowed once the license has been issued.

- (b) *Term; expiration.* All licenses granted hereunder shall be valid for one year from the date of issuance. Each subsequent application shall be treated as an initial application and the applicant shall be required to comply with all requirements of this section (including any amendments) for the granting of licenses as if no previous license had been held. Existing massage therapy establishments shall file applications within ninety (90) days from the effective date of this section. Applications filed later than that date, and subsequent applications filed later than sixty (60) days before expiration of the then current license, shall be subject to a late fee of ten percent of the regulatory fee.
- (c) *No Transfer or Assignment.* No license issued pursuant to this Section 11-10 shall be assignable or transferable.

Sec. 11-10.6. General operating provisions.

- (a) Massage therapy establishments shall keep on file, on the premises of the establishment, a list of all persons who perform any service on the premises of the establishment, their home addresses and home or mobile telephone numbers, their duties and services performed for the massage establishment, and whether such person has a massage therapy license issued by the State. The holder of a massage therapy establishment license also shall keep on file, on the premises of the establishment, copies of the establishment's two most recent license applications.
- (b) Massage therapy establishments shall maintain correct and accurate records of each instance that a service is provided, the type of service provided, and the name of the person in the establishment who provided the service. The records shall be subject to inspection by the Director of Health, the Chief of Police, and any member of the U.N.I.T., during those times when the establishment is open to the public.

- (c) No massage therapy establishment shall allow any person required to have any state mandated licenses to perform any massage therapy service on the premises until such person has procured such license. Licensees and all managers and/or supervisors of any massage therapy shall and verify that each person who performs services on the premises who is required to have a valid state license has the required license on the establishment premises at all times. No person on the premises engaging in massage for which a state license is required shall refuse to provide a copy of the person's state massage therapy license upon request by any customer or to any city official referred in Subparagraph (b) above. At least one person licensed by the State to perform massage therapy shall be employed and present at each massage therapy establishment to render massage therapy services to patrons during business hours.
- (d) Each massage therapy establishment shall have an owner, manager or supervisor on the premises at all hours that the establishment is occupied by patrons or is open to the public. If during an inspection there is no owner, manager or supervisor on the premises, the establishment shall cease operations and close until an owner, manager or supervisor is on the premises.
- (e) Records required to be maintained under this Section shall be kept for a minimum of two years. Records shall be made available to the Director of Health, Chief of Police or any member of U.N.I.T. upon request during business hours, at the establishment's business location.
- (f) All employees and other persons on the premises, with the exception of customers receiving a massage from a state licensed massage therapist, shall be completely clothed. For the purposes of this Subparagraph (f), the term "completely clothed" means having on the upper portion of the body appropriate undergarments and either blouse or shirt which shall cover all the upper body save the arms and neck, and shall mean having on the lower body appropriate undergarments plus either pants or skirt, and said pants or skirt must cover from the waist down to a point at least two inches above the knee. All clothes worn in compliance with this Subparagraph shall be entirely non-transparent.
- (g) No customer receiving a massage from a state licensed massage therapist shall expose his or her genitals, pubic area, anus, or the areola or nipple of the female breast to another person on the premises of a massage establishment.

The prohibition against a customer exposing the areola or nipple of the female breast while receiving a massage from a state licensed massage therapist shall not apply when the massage therapist is certified to provide oncology massage or manual lymphatic drainage massage.

- (h) No massage therapy establishment shall be open for business between the hours of 9:00 p.m. and 7:00 a.m. No person shall be or remain inside a massage establishment between the hours of 10:00 p.m. and 6:00 a.m. No massage therapy establishment shall hold itself out as open at a time that the establishment is prohibited, under this subsection, from being open for business.
- (i) A readable sign shall be posted at the main entrance identifying the establishment. Signs shall comply with the sign requirements of the Zoning Regulations of the City of Danbury.
- (j) Minimum lighting shall be provided in accordance with the State building code, and at least one artificial light of not less than 40 watts (or equivalent illumination) shall be provided in each enclosed room or booth.
- (k) Ordinary beds or mattresses shall not be permitted in any massage therapy establishment.
- (l) No massage therapy establishment shall knowingly or recklessly allow any minor (i.e., a person under the age of 18) to be or remain inside the massage therapy establishment unless the minor is accompanied by his or her parent, legal guardian, or person who is at least 21 years of age and has been entrusted with the minor by the minor's parent or legal guardian.
- (m) No person shall knowingly or recklessly touch, manipulate, fondle, or handle in any manner the sexual organs, genital area, or anus of any other person on the premises of a massage therapy establishment. The licensee shall operate the establishment in such a manner as to prevent its employees or agents from engaging in such activities or in other specified criminal activities as defined in this Section 11-10.
- (n) It shall be unlawful to operate a massage therapy establishment with storefront windows that have material and glazing applied or affixed that reduces light transmission through the windows to less than 32%, plus or minus 3 percent, or increases light reflectance to more than 20 percent.

- (o) Massage therapy establishments and their employees shall ensure that storefront windows are not blocked by curtain, blinds, or any other screening material during those times when the establishment is occupied by patrons or is open to the public.
- (p) Every part of the massage therapy establishment, including apparatus and personnel, shall be kept clean and operated in a sanitary condition. Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use. Standard or portable massage tables shall be covered with a durable washable material which is capable of being sanitized.
- (q) Every room or enclosure used for the reception or treatment of patrons shall be equipped with a door, partition, or curtain or shall otherwise ensure the privacy of the patron. A full schedule of service rates shall be posted in a prominent place within the massage therapy establishment in such a manner as to come to the attention of all patrons. No charges other than the specified rates for specified services are to be allowed, and each patron shall be notified of the full cost prior to the rendering of any service.
- (r) Each person performing massage therapy services shall have access to an adequate and constant supply of running hot and cold water during business hours, and all furniture and equipment in each room shall be kept clean at all times and must be able to be properly sanitized. The Director of Health may determine the number of sinks, and the location of sinks, needed at each massage therapy establishment.

- (s) The facility shall have adequate equipment for disinfecting and sanitizing nondisposable instruments and materials used in administering massages. All nondisposable instruments shall be sanitized after use on each person.
- (t) No unsanitized part of a percussor, vibrator, or other mechanical appliance shall be applied directly to the skin of a patron. The part of the body being treated shall be covered with a clean towel.
- (u) Robes, towels, cloths, or other linens which come into direct contact with the bodies of patrons shall, after use and before reuse, be laundered in such a manner as to ensure effective sanitization. No common use of robes, towels, cloths, or other linens is permitted. All used robes, towels, cloths, or other linens shall be kept in covered containers, closed cabinets, or closed bags and

shall be kept separately from clean robe, towel, cloth or linen storage areas. Such separate storage areas shall be plainly marked as "CLEAN" or "SOILED."

- (v) All oils, creams, lotions, talcs or other preparations used in administering massage shall be kept in clean, closed containers or cabinets.
 - (w) All nondisposable instruments and devices designed or used for direct application to the skin shall be such as can readily be kept clean.
 - (x) The Director of Health may require separate dressing rooms, lockers, showers and toilets for each sex based upon the layout of the facility, and the services that are provided.
 - (y) The Director of Health shall have the authority to adopt technical standards, policy and procedures to ensure proper sanitary and safe operation of the massage therapy establishment, and shall publish them on the city's website. Failure of the massage therapy establishment to comply with minimum requirements as outlined in the technical standards shall be considered a violation of this Section 11-10.
 - (z) Every licensee (or its manager or supervising employee, as the case may be) shall keep a daily register, approved as to the form by the Director of Health, of all patrons with names, addresses and hours of arrival and, if applicable, the rooms or cubicles assigned. Such register shall at all times during business hours be subject to inspection by the Chief of Police, the Director of Health and any member of the U.N.I.T.
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- (aa) No person performing massage therapy shall treat any patron having a communicable disease or exhibiting any skin fungus, skin infection, skin inflammation, or skin eruption, unless a physician licensed in the State of Connecticut shall certify in writing that such person may be safely massaged, describe the conditions under which such massage may be performed, and certify further that any such communicable disease, fungus, infection, inflammation, or eruption is not of a contagious or transmissible nature. No person who has a communicable disease or exhibits the symptoms enumerated in this paragraph may administer massage unless a physician licensed in the State of Connecticut shall certify in writing such person may safely massage others, describe the conditions under which such person may administer massage, and certify further that any such communicable disease, fungus,

infection, or eruption is not of a contagious or transmissible character, through massage or through the close contact ordinarily associated with massage.

- (bb) Any person performing massage therapy who operates a vibrator or other mechanical appliance in proximity to any body location where scalp hair can be pulled into its moving parts shall cover or wrap a patron's hair in a way to protect the hair from such moving parts.
- (cc) Any person performing massage therapy shall wash his or her hands with hot and cold running water using a proper soap or disinfectant immediately before and after administering massage to any person.
- (dd) No person employed by a massage therapy establishment may diagnose disease, prescribe medicine, or perform any procedure which requires a license to practice medicine, dentistry, nursing, physical therapy, pharmacy, podiatry, chiropractic or any healing arts profession subject to licensing by the State of Connecticut.

Sec. 11-10.7. Inspection.

Massage therapy establishments and their employees shall permit the Director of Health, Chief of Police and/or any member of U.N.I.T. to inspect, from time to time, any portion of the establishment premises where patrons are permitted, for the purpose of ensuring compliance with the requirements of this Section 11-10, during those times when the establishment is occupied by any patron or is open to the public. This Subsection 11-10.7 shall be construed by the city to authorize reasonable inspections of the licensed premises, but not to authorize a harassing or excessive pattern of inspections. The Chief of Police and any member of U.N.I.T. shall report in writing any findings of a violation of any of the requirements of this Section 11-10 to the Director of Health as soon as practicable after the inspection.

Sec. 11-10.8. Notice of Violation.

- (1) Whenever the Director of Health determines, based on his/her own investigation or reports from the Chief of Police or U.N.I.T, that any establishment fails to meet the requirements set forth in this Section, she/he may issue a written notice of violation to the licensee or applicant, as the case may be, setting forth the alleged failures and date for correction.

- (2) At the end of the period of time allowed for the correction of any violation, the Director of Health shall reinspect the establishment to determine if the violation has been corrected.
- (3) If, upon reinspection, the violations are determined not to have been corrected, immediate action shall be taken to correct the violations, including but not limited to assessing fines, suspending or revoking the permit.

Sec. 11-10.9. Denial, revocation and suspension of license.

- (a) *Denial or revocation for specific violations.* The Director of Health shall issue a written notice of intent to deny or revoke a massage therapy establishment license, as the case may be, if:
 - (1) The licensee or applicant has failed to maintain the qualifications for holding a license;
 - (2) The licensee or applicant has knowingly or recklessly given false information in the application for the license or has failed to supplement the application information as required by Subsection 11-10.4(b) after a change of circumstances that renders the information originally submitted false or incomplete;
 - (3) The licensee or applicant has failed to maintain correct and accurate records as required by this Section 11-10;
 - (4) The licensee or applicant or any of its employees, agents or managers has engaged in or knowingly or recklessly allowed possession, use, or sale of alcohol or controlled substances in or on the premises of the establishment;
 - (5) The licensee or applicant any of its employees or agents has committed any specified criminal activity (as defined in subsection 11-10.2);
 - (6) The licensee or applicant has violated Subparagraph (c) of Subsection 11-10.6;
 - (7) The licensee or applicant or any employee, agent, or manager has knowingly or recklessly allowed any minor (i.e., a person under the age of 18) to be or remain inside the massage therapy establishment unless

the minor is accompanied by his or her parent, legal guardian, or a person who is at least 21 years of age and has been entrusted with the minor by the minor's parent or legal guardian;

- (8) The licensee has knowingly or recklessly allowed three (3) or more violations of any provision of this Section 11-10 within a twelve-month period; or
 - (9) The licensee or applicant has knowingly or recklessly operated or allowed the operation of the massage therapy establishment while under suspension pursuant to Subparagraph 11-10.9.(c).
- (b) *Effect of revocation.* When a notice of intent to revoke a license has been issued, the licensee shall not apply for or be issued any new license under this Section until such notice has been withdrawn or, if revocation has become effective, until two (2) years after the effective date of revocation.
- (c) *Suspension for certain violations; Discretion of Director of Health.* Notwithstanding subsection (a) above, the Director of Health may in his or her discretion, in lieu of revocation of a license, and after consideration of the seriousness of the violation and its relation to the purposes of this Section 11-10, issue notice to suspend the license for a period of no less than ten (10) days and no longer than sixty (60) days, if he or she determines that a) an agent, manager, officer or employee of the licensee violated the relevant provision without the actual knowledge of the licensee, b) the licensee did not knowingly or recklessly violate the provision and could not reasonably have prevented the violation, or (c) there has been no prior revocation or suspension of the license. This Subparagraph (c) allowing suspension in lieu of revocation shall not apply to any violation referred to in subsection (a)(5) above.

Sec. 11-10.10. Hearing; license denial, revocation, or suspension.

- (a) When the Director of Health issues a written notice of intent to deny, revoke or suspend a license, the Director of Health shall immediately send such notice, which shall include the specific grounds under this Section for such action (including the provision(s) allegedly violated, and in the case of a notice of suspension, the period of suspension proposed for each such violation), to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business

address or other mailing address on file with the Director of Health for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the Director of Health, a written request for a hearing before the Director of Health at which the respondent shall have the right to present witnesses, evidence and argument on all relevant facts and issues. If the respondent does not request a hearing within said ten (10) days, the Director of Health's written notice shall become a final denial or revocation, as the case may be, on the eleventh (11th) day after it is issued.

- (b) If the respondent does make a written request for a hearing within said ten (10) days, the Director of Health shall, within ten (10) days after the submission of the request, send a written notice, by personal delivery or certified mail, to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than fifteen (15) days nor more than thirty (30) days after the date that the hearing notice is issued. The city shall provide for the hearing to be transcribed. A request for a hearing shall stay any revocation, suspension or denial until such time as a hearing has been held and a decision rendered thereon; provided, however, that if the Director of Health finds that the public health, safety or welfare requires emergency action and incorporates a finding to that effect in the notice, a license may be summarily suspended, pending a hearing thereon, which hearing shall be promptly instituted and all facts and issues promptly determined.
- (c) At the hearing, the respondent shall have the opportunity to be represented by counsel, present evidence, witnesses and argument on his or her behalf on all relevant issues (including any mitigating circumstances) and cross-examine any of the city's witnesses. An original or certified copy of the notice of revocation, denial or suspension shall be admitted as evidence of the facts contained therein. The respondent shall bear the burden of proving entitlement to the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet with requirements of due process and proper administration of justice. The Director of Health shall render a final written decision within ten (10) business days after the date of termination of the hearing, and shall within that time send to the respondent, by personal delivery or certified mail, a copy of the decision, including specific reasons for the decision as to each violation alleged in the notice of

intent. The decision shall also specify its effective date, which shall be no later than the thirtieth (30) day after it is rendered.

- (d) In the case of suspension, the decision shall include the specific time period of suspension for each violation found to have occurred.

Sec. 11-10.11. Penalty.

- (a) Any person who operates a massage therapy establishment without first obtaining a license under this Section 11-10 shall be punished by a fine of \$100.00.
- (b) Every person who provides massage therapy at a massage therapy without a validly issued state license shall be reported to the Connecticut Department of Public Health by the Director of Health.
- (c) Every person who fails to correct any other violations of the provisions of this Section 11-10 within the time period determined for correction, or whose license is revoked hereunder, shall be punished by a fine of \$100.00.
- (d) Each violation and each day any such violation exists shall constitute a separate offense. The Chief of Police, Director of Health, and any member of U.N.I.T. are authorized to issue citations for violations of this Section 11-10 pursuant to Sections 12-34 and 12-35 of the Code of Ordinances.
- (e) The issuance of penalties and citations under this Subsection 11-10.11 shall be in addition to other available methods of enforcement of this Section 11-10. Nothing in this Section and no action taken hereunder shall be held to exclude such other civil, criminal, or administrative proceedings as may be authorized by other provisions of this Code or any other State or local law or regulation or to exempt anyone violating any part of said laws or regulations from any penalty which may be imposed thereunder.

Sec. 11-10.12. Severability.

If any term, phrase, sentence, or section of this Section 11-10 shall be declared invalid for any reason by a court of competent jurisdiction, such decision shall not affect the remaining parts of this Section, and such parts shall continue in full force and effect and are hereby declared to be severable.

Sec. 11-10.13. Judicial remedies.

- (a) If any premises, building, dwelling or other structure is operated or maintained as a massage therapy establishment after denial, revocation or suspension of its license under this Section 11-10, the Office of the Corporation Counsel is authorized to bring an action in the name of the city in the Superior Court for the Judicial District of Danbury against the owner, operator or other person responsible for conduct giving rise to the denial or revocation or suspension, to restrain, prohibit or enjoin the use of such premises, building, dwelling or structure as a massage therapy establishment.
- (b) In order to obtain an injunction under this Subsection 11-10.13, it shall not be necessary to allege or prove that there is no adequate remedy at law or to allege or prove damages or other special injury.
- (c) If the court issues an injunction upholding the revocation or denial of a license pursuant to this Subsection, the city shall be entitled to recover its reasonable attorneys' fees and costs incurred in bringing the action.

Sec. 11-10.14. Effective date.

This Ordinance shall take effect thirty days after publication in a newspaper of substantial circulation in the city.

APPROVED AND ADOPTED this the _____ day of _____, 2019.