

**COMMON COUNCIL
Agenda Request Form**

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Common Council meets on the 1st and 3rd Monday of each month at 6:00 p.m. in City Hall located at 70 E. Monroe Street.

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|---|--|----------------------|-----------------------|
| Date Submitted: | 09.10.2024 | Meeting Date: | 09.16.2024 |
| Contact Information: | | | |
| Requested by: | Lynnette Gray | | |
| | | | |
| On Behalf of Organization or Individual: | City of Franklin | | |
| | | | |
| Telephone: | 317-738-3365 | | |
| Email address: | lynng@jgmlawfirm.com | | |
| Mailing Address: | 63 E. Court St., P.O. Box 160, Franklin, IN 46131 | | |
| Describe Request: | | | |
| Introduction of Ordinance Number 24-05 An Ordinance Repealing and Replacing | | | |
| Ordinance Number 83-7 Defining, Regulating, Licensing and Governing Massage | | | |
| Parlors in the City of Franklin, Indiana | | | |
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| List Supporting Documentation Provided: | | | |
| Ordinance Number 24-05 | | | |
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| Who will present the request? | | | |
| Name: | City Attorney Lynnette Gray | Telephone: | (317) 738-3365 |

In order for an individual and/or agency to be considered for new business on the Common Council agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.

**ORDINANCE NO.: 2024-05
OF THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA**

**AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 83-7 DEFINING,
REGULATING, LICENSING AND GOVERNING MASSAGE PARLORS IN THE CITY
OF FRANKLIN, INDIANA**

WHEREAS, the City of Franklin has previously established regulations regarding the operation of massage establishments and masseurs and masseuses all as set out in Ordinance No. 83-7 adopted by the City of Franklin on February 21st, 1983; and

WHEREAS, the regulations are not applicable to licensed or certified medical professionals, practitioners or massage therapists and it is recommended that the City of Franklin Ordinance No. 83-7 be repealed and replaced in its entirety with this Ordinance herein to clarify and regulate licensing and govern operation of massage parlors in the City of Franklin, Indiana as previously established per Ordinance No. 83-7 and codified in Municipal Code 5.24.010 through 5.24.080.

NOW THEREFORE, BE IT ORDAINED that the City of Franklin Common Council hereby repeals Ordinance No. 83-7 and adopts the Ordinance herein thereby amending Franklin Municipal Codes to read as follows:

Section 1. Definitions.

For purpose of this chapter, the following words and phrases shall have the meanings ascribed to them unless the context clearly indicates and requires a different meaning:

(a) Employee. Any and all persons, other than the masseurs or masseuses, who render any service to the permittee, who receive compensation directly from the permittee, and who have no physical contact with customers and clients.

(b) Massage. Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

(c) Massage establishment. Any building, room, place, or establishment, other than:

- (1)** A massage therapy school certified by the state;
- (2)** A regularly licensed hospital or associated facility or dispensary; or

A facility wherein each person who administers a massage is exempt from permit requirements under Section 2; where massages, nonmedical, and nonsurgical

manipulative exercises are practiced upon the human body with or without the use of mechanical or bath devices, by anyone not a physician, osteopath, chiropractor, podiatrist or physical therapist duly registered with and licensed with the state.

(d) Masseur or Masseuse. Any person who, for any consideration whatsoever, engages in the practice of massage but does not meet the criteria for permit exemption under Section 2.

(e) Massage Therapist. A person who possesses a certification or license from the State of Indiana to provide massage therapy and meets the criteria for permit exemption.

(f) Massage Therapy. A health care service profession involving a certified and/or licensed practitioner applying manual techniques, and who may apply additional therapies for purposes of enhancing the health and well-being of a client.

(g) Massage Therapy Practice. A building, room, place or establishment that employs only massage therapists to perform massage therapy.

(h) Recognized School. Any school or institution of learning which has for its purpose the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study not less than seventy (70) hours to be given in not more than three (3) calendar months before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning.

(i) Private Parts or Genital Area. "Private parts or genital area" means a sexual or genital area of any person and shall include the genitals, pubic area, anus or perineum of a person or the vulva or the breast of a female.

Section 2. Exception to Application.

This Ordinance shall not apply to hospitals, nursing homes, sanitarium, the YMCA or YWCA, or other establishments where eighty (80) percent of the gross receipts are derived from sources other than massage activities, or to a person operating a massage therapy practice or practicing as a massage therapist, or to persons working under the direction of any such persons or in any such establishments.

Section 3. License Required.

(a) It is unlawful for any person or firm to operate, conduct, or maintain a massage establishment without a license to operate such massage establishment issued by the Police Chief of the City of Franklin or his authorized agent and the Director of the County Health Department.

(b) It shall be unlawful for any person or firm licensed to operate a massage

establishment to employ or permit any person to perform a massage unless such person holds a valid permit as a masseur or masseuse by the Police Chief of the City of Franklin or his authorized agent.

(c) No license shall be required of any school licensed and regulated by the State Department of Public Instruction, by any regular four-year college or university, or by any Young Men's Christian Association or Young Women's Christian Association, licensed hospital or licensed nursing home, or by any licensed physician, osteopath, chiropractor, or physical therapist.

Section 4. Hours of Operation.

A massage establishment shall not carry on, engage in, or conduct business before 8:00 a.m. or after 10:00 p.m. six days of the week, with Sunday hours limited to noon to 8:00 p.m.

Section 5. Advertising.

No massage establishment shall place, publish, or distribute or cause to be placed, published, or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than massage services, or that employees, masseurs, or masseuses are dressed in any manner contrary to this Ordinance; nor shall any massage establishment indicate in the text of such advertising that any service is available other than massage services.

Section 6. Sanitation of Establishments Generally.

Every portion of a massage establishment, including all appliances and apparatus, shall be kept clean and operated in a sanitary condition.

Section 7. Sheets and Towels.

All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in approved, sanitary manner.

Section 8. Dressing Rooms.

Every massage establishment shall make provisions for a separate dressing room for each sex available on the premises with individual lockers for each patron. Doors to such dressing rooms shall open inward and shall be self-closing.

Section 9. Where Service is to be Rendered.

All massage services regulated by this Ordinance shall be carried on in one cubicle, room, booth, or area within the massage establishment, and no massage establishment shall

install or maintain any locking mechanism on the inside of any door to an area where massage services are provided. The entrance to the massage establishment shall remain unlocked during business hours.

Section 10. Employee's , Masseurs, etc. Clothing.

All employees of massage establishments shall wear clean outer garments whose use is restricted to the establishment; all such employees, masseurs, and masseuses must be modestly attired, and diaphanous, flimsy, transparent, form-fitting, or tight clothing is prohibited. All clothing must cover the employees', masseurs' or masseuses' chests, sexual or genital areas at all times.

Section 11. Sanitation of Personnel Generally.

All personnel of massage establishments shall maintain themselves in a clean and sanitary condition.

Section 12. Nudity of Patrons.

The private parts of a patron of a massage establishment shall be covered by towels, cloths, or undergarments when in the presence of an employee, masseur or masseuse, and any contact by said employee, masseur or masseuse with a patron's genital area shall be unlawful.

Section 13. Inspections.

Upon showing the proper credentials, the Police Department and/or the County Health Department shall be entitled, from time to time and at least twice a year, to make an inspection of each massage establishment for the purposes of determining compliance with the provisions of this Ordinance or Statute. Such inspections shall be made at reasonable times and in a reasonable manner.

Section 14. Transfer of Permits.

No license or permit required by this Ordinance shall be transferable except with the written consent of the Chief of Police and the approval of the County Health Department; provided, however, that upon the death or incapacity of the permittee a massage establishment may continue in business for a reasonable period of time to allow for an orderly transfer of the permit.

Section 15. Rules and Regulations.

The Chief of Police or the Director of the County Health Department may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with this Ordinance to carry out its intent. In the event the regulations promulgated by these officials conflict, then those promulgated by the Chief of Police shall be controlling.

Section 16. License Fee.

Every applicant for a license to maintain, operate or conduct a massage establishment shall file an application with the Chief of Police or his/her Designee and pay a filing fee of Three Thousand Dollars (\$3,000.00), which shall not be refundable.

Section 17. Application; Information Required.

(a) The application for a license to operate a massage establishment shall set forth the exact nature of the massage to be administered, the proposed place of business and facilities therefor, and the name and address of each applicant.

(b) In addition to the foregoing, any applicant for such a license shall furnish the following information:

- (1) Applicant shall be the owner of the message establishment.
- (2) Written proof that the applicant is at least eighteen (18) years of age.
- (3) Two (2) portrait photographs of applicant at least two (2) inches by two (2) inches.
- (4) Applicant's fingerprints.
- (5) Applicant's business, occupation or employment for the three (3) years immediately preceding the date of application.
- (6) Applicant's massage or similar business license history.
- (7) Whether such person, in previously operating in this or another city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.
- (8) Any criminal convictions, except minor traffic violations.

Section 18. Hearing; Notice Thereof.

(a) When an application is filed for a massage establishment permit, the Chief of Police or his/her Designee shall fix a time and a place for a public hearing, which shall be held and at which the applicant may present evidence upon the question of his/her application.

(b) Not less than ten (10) days before the date of such hearing, the Chief of Police or his/her Designee shall cause to be posted a notice of such hearing in a conspicuous place on the property in which or on which the proposed massage establishment is to be operated or shall publish notice of said hearing in a newspaper having general county wide circulation at least five (5) days prior to the date of such hearing.

Section 19. Issuance of License for a Massage Establishment.

(a) The Chief of Police or his/her Designee shall issue a license for a massage

establishment within fourteen (14) days following the required hearing if all requirements of this Ordinance for a massage establishment are met and may issue such a license unless he/she finds that:

- (1) The operations as proposed by the applicant if permitted would not comply with all applicable ordinances including, but not limited to, the building, health, planning, housing, zoning, and fire codes.
- (2) The applicant and any other person who will be directly engaged in the management and operation of a massage establishment has been convicted of a felony, or an offense involving sexual misconduct with children, or any obscenity, keeping or residing in a house of ill fame, solicitation of a lewd or unlawful act, prostitution, or pandering.
- (3) The applicant has had a massage establishment permit or license revoked by a State or Local Government entity.
- (4) The Chief of Police or his/her Designee determines that the applicant has provided false information on the application.

(b) The Chief of Police or his/her Designee in his/her discretion may issue a license to any person convicted of any of the crimes in subsection (2) if he/she finds that such conviction occurred at least ten (10) years prior to the date of the application and the applicant has had no subsequent convictions.

(c) If the Chief of Police or his/her Designee fails to issue the license within the time provided, the application is deemed denied.

Section 20. Facilities Required as Prerequisite to Issuance.

(a) No license to conduct a massage establishment shall be issued unless an inspection by the Director of the County Health Department, or his/her authorized representative, reveals that the establishment complies with each of the following minimum requirements:

- (1) The construction of rooms used for toilets, tubs, steam baths, and showers is waterproof with approved waterproof materials.
- (2) Toilet facilities are provided in convenient locations, and when five (5) or more employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. A single water closet for each sex shall be provided for each twenty (20) or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one water closet has been provided. All toilets shall be designated as to the sex accommodated therein.
- (3) All lavatories or wash basins are provided with both hot and cold running water and are installed in either the toilet room or a vestibule, and lavatories or wash basins are provided with soap in a dispenser and with sanitary towels.

(b) The Director of the County Health Department shall certify that the proposed

massage establishment complies with all of the requirements of this section and shall give or send such certification to the Chief of Police.

Section 21. Revocation or Suspension.

(a) Any license issued for a massage establishment shall be revoked or suspended by the Chief of Police, after a public hearing before the Chief of Police, where it is found that any of the provisions of this Ordinance are violated or where the permittee or any employee of the permittee, including a masseur or masseuse, has been convicted of any offense found in Section 19 and Section 25 and the permittee has actual or constructive knowledge of the violation or conviction, or in any case where the permittee refuses to permit any duly authorized police officer or health inspector to inspect the premises or the operations therein.

(b) No such public hearing shall be held unless the Chief of Police gives the permittee whose license is its subject at least ten (10) days' written notice of the specific charges against him/her and of the date of said hearing.

(c) At the required hearing, the person whose license is its subject shall have the right to present evidence, cross-examine those who testify against him/her and be represented by an attorney.

Section 22. Permit Required for Masseurs or Masseuses.

It shall be unlawful for any person, including one who holds a massage establishment license, to engage in the practice of massage without a permit issued by the Chief of Police.

Section 23. Permit Fee for Masseurs or Masseuses.

Any person desiring the permit required by this Ordinance shall file an application for said permit with the Chief of Police or his/her Designee upon a form provided by said Chief or his/her Designee and shall pay a filing fee of Five Hundred Dollars (\$500.00), which shall not be refundable.

Section 24. Application for Permit; Information Required.

An application for a masseur or masseuse permit shall contain the following information:

- (a) The applicant's name and residence address.
- (b) The applicant's social security number.
- (c) The applicant's weight, height, color of hair and eyes, and fingerprints.
- (d) Written evidence that the applicant is at least eighteen (18) years of age.

(e) The applicant's business, occupation or employment for the three (3) years immediately preceding the date of application.

(f) Whether the applicant has ever been convicted of any crime except minor traffic violations. If he/she has been so convicted, a statement must be made giving the nature of the offense, place and court in which the conviction was obtained and the sentence imposed as a result of such conviction.

(g) The name and address of any recognized schools attended; the date attended.

Section 25. Permit Issuance Criteria.

The Chief of Police or his/her Designee may issue a masseur or masseuse permit within twenty-one (21) days following application, unless he/she finds that the applicant for the permit has been convicted of a felony, an offense involving sexual misconduct with children, or any obscenity, keeping or residing in a house of ill fame, solicitation of a lewd or unlawful act, prostitution, or pandering. If no action is taken within twenty-one (21) days, the permit is deemed denied. The Chief in his/her discretion may issue a permit to any person convicted of such crimes if he/she finds that such conviction occurred at least ten (10) years prior to the date of the application and the applicant has had no subsequent convictions.

Section 26. Revocation or Suspension of Permit.

(a) A masseur or masseuse permit issued shall be revoked or suspended after a public hearing before the Chief of Police where it appears that the masseur or masseuse has been convicted of any offense enumerated in Section 19 or Section 25.

(b) No such public hearing shall be held unless the Chief of Police gives the permittee whose permit is its subject at least ten (10) days' written notice of the specific charges against him/her and the date, time and place of said hearing.

(c) At the required hearing, the person whose permit is its subject shall have the right to present evidence, cross-examine those who testify against him/her and be represented by an attorney.

Section 27. Complaints.

Complaints of alleged violations of the provisions of this chapter may be made in writing to the City of Franklin Chief of Police or his or her authorized agent. On learning of violations of the provisions of this chapter or related ordinances or laws, the Chief of Police or his or her authorized agent shall hold a hearing to determine if any previously issued permit shall be revoked. After the hearing thereon, if the Chief of Police or his or her authorized agents should determine that the permit shall be revoked, no refund of license or permit fee shall be due.

Section 28. Violation/Penalty.

Whoever violates any provisions of this ordinance for which no penalty is otherwise provided, shall be fined not more than five hundred dollars (\$500.00). A separate offense shall be deemed committed on each day that a violation occurs or continues.

Section 29. Ordinance Affect.

This Ordinance does not affect any other provisions of the Franklin Municipal Code, as amended, except as established per Ordinance No. 83-7 which is specifically repealed and replaced in its entirety with the provisions herein. All other provisions of the Franklin Municipal Code as amended shall remain the same.

Section 30. Separable.

The sections, paragraphs, sentences, clauses and phrases of this Ordinance are separable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

This Ordinance shall be in full force and effect from and after its passage and signing of the Mayor.

Introduced and Filed on the ____ day of _____, 2024.

DULY PASSED on this _____ day of _____, 2024 by the Common Council of the City Of Franklin, Johnson County, Indiana, having been passed by a vote ____ in Favor and ____ Opposed.

City of Franklin, Indiana, by its Common Council:

Voting Affirmative:

Voting Opposed:

Kenneth W. Austin, President

Kenneth W. Austin, President

Todd Shuck, Member

Todd Shuck, Member

Anne McGuinness, Member

Anne McGuinness, Member

Irene Nalley, Member

Irene Nalley, Member

Jennifer Price, Member

Jennifer Price, Member

Josh Prine, Member

Josh Prine, Member

Shawn Taylor, Member

Shawn Taylor, Member

Attest:

Jan Jones
City Clerk-Treasurer

Presented by me to the Mayor of the City of Franklin for his approval or veto pursuant to Indiana Code § 36-4-6-15, this ____ day of _____, 2024 at _____ o'clock a.m./p.m.

Jan Jones
City Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me was Approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-1(a)(1) Vetoed pursuant to Indiana code § 36-4-6-16(a)(2), this _____ day of _____, 2024 at _____ o'clock a.m./p.m.

Steve Barnett
Mayor

Attest:

Jan Jones
City Clerk-Treasurer

Approved as to Form:

Lynnette Gray
City Attorney