

Ordinance No. _____

AN ORDINANCE OF THE CITY OF HARROGATE, TENNESSEE PROVIDING FOR THE LICENSING AND REGULATION OF MASSAGE PARLORS.

The Board of Mayor and Aldermen have determined that there is a public need to regulate and license massage parlors; and

Therefore, BE IT ORDAINED by the Board of Mayor and Alderman as follows:

Section 1. Definitions. For the purposes of this chapter the following phrases and words shall have the meaning assigned below, except in those instances where the context clearly indicates a different meaning.

(1) "Massage." The administering by any person by any method of exerting or applying pressure, friction, moisture, heat or cold to the human body, and/or the rubbing, stroking, kneading, pounding, tapping, or otherwise manipulating a part or the whole of the human body or the muscles or joints thereof, by any physical or mechanical means. Massage shall also mean the giving, receiving, or administering of a bath to any person, or the application of body paint or other colorant to any person.

(2) "Massage parlors." Any premises, place of business, or membership club where there is conducted the business or activity of furnishing, providing or giving for a fee, or any other form of consideration, a massage, bath, body painting, or similar massage service or procedure. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath. Nor shall this definition be construed to include a barbershop or beauty salon operated by a duly licensed barber or cosmetologist, so long as any massage administered therein is limited to the head and neck.

(3) "Massage technician." Any person who administers a massage to another at a massage parlor.

Section 2. Massage parlor permit--required. It shall be unlawful for any person to establish, maintain or operate a massage parlor in the city without a valid permit issued pursuant to this chapter or any prior ordinance.

Section 3. Same--application; renewals; fees. (1) Any person desiring a massage parlor permit to establish, maintain or operate a massage parlor in the city shall make application to the city manager. Each massage parlor permit application shall be accompanied by an investigation fee of one hundred dollars (\$100.00), payable to the city recorder. Each massage parlor

permit shall expire one year from the date of issuance. Each renewal application shall be accompanied by an investigation fee of fifty dollars (\$50.00). Each such application shall contain the name, address and telephone number of the place where the applicant proposes to operate, maintain or establish a massage parlor in the city.

(2) In addition, such application shall include a sworn statement as to whether or not the applicant (if the applicant is a partnership or association, any partner or member thereof, or if the applicant is a corporation, any officer, director or manager thereof, or any shareholder) has been convicted, pleaded nolo contendere, or suffered a forfeiture a charge of violating any law relating to sexual offenses, prostitution, obscenity, etc., or any provision of this ordinance, or on a charge of violating a similar law or ordinance in any other jurisdiction.

(3) The application shall state thereon that: "It is unlawful for any person to make a false statement on this application, and discovery of a false statement shall constitute grounds for denial of an application or revocation of a permit."

(4) Each applicant shall have his fingerprints taken, which fingerprints shall constitute part of the application.

(5) A photograph of the applicant taken within sixty (60) days immediately prior to the date of application, which picture shall be not less than two (2) inches by two (2) inches showing the head and shoulders of the applicant in a clear and distinguishable manner, shall be filled with the application.

Section 4. Same--investigation of applicant; grounds for denial of application.

(1) Upon receipt of the application and fee as provided for in this ordinance, the recorder shall make or cause to be made a thorough investigation of the criminal record of the applicant (if the applicant is a partnership or association, all partners or members thereof, or if the applicant is a corporation, all officers, directors and managers thereof, and all shareholders). The result of this investigation shall be submitted by the city recorder within thirty (30) days of the request.

(2) The city recorder shall deny any application for a massage parlor permit under this chapter after notice and hearing if the city recorder finds that the applicant (if the applicant is a partnership, association or limited liability entity, any partner or member thereof, or if the applicant is a corporation, any officer, director or manager thereof, or shareholder) has within a period of two (2) years prior to application been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any law relating to sexual offenses, prostitution, obscenity, etc., or any provision of this chapter, or on a charge of violating a similar law or ordinance in this or any other jurisdiction. The making of a false statement on the application shall also be grounds for denial of this application. Notice of the hearing before the city recorder for denial of this application shall be given in writing, setting forth the grounds of the complaint and the time and place of hearing.

Such notice shall be mailed by certified mail to the applicant's last known address at least five (5) days prior to the date set for hearing.

Section 5. Same--investigation of premises and issuance. The city recorder, before issuing any massage parlor permit, shall cause in investigation to be made of the premises named and described in the application for a massage parlor permit under this chapter for the purpose of determining whether the massage parlor complies with the provisions of this chapter, the zoning ordinances, all building, fire, plumbing and electrical codes, and, for this purpose, a copy of the application shall immediately be referred to the building officials to make or cause to be made a thorough investigation of the premises and the result of this investigation and whether such premises comply with the zoning, building, fire, plumbing and electrical codes, shall be submitted to the city recorder within thirty (30) days of the request.

Section 6. Display. Every person to whom a massage parlor permit shall have been granted shall display such massage parlor permit in a conspicuous place in the massage parlor or establishment so that it may be readily seen by persons entering the premises.

Section 7. Same--revocation; grounds; notice to permittee. (1) Power generally. The city recorder shall have the power to revoke or suspend for any period of time up to two (2) years, and shall be charged with the duty of revoking or suspending, any massage parlor permit after notice to permittee and hearing upon any grounds set forth in this section.

(2) Grounds. The following shall be deemed good and sufficient grounds for revocation or suspension of massage parlor permit :

(a) Upon evidence presented that the permittee (if the permittee is a partnership or association, any partner or member thereof, or if the permittee is a corporation, any officer, director, or manager thereof, or shareholder, or if the permittee is a limited liability entity, any member or manager thereof) has within a period of two (2) years been convicted, pleaded nolo contendere or suffered a forfeiture on a charge of violating any law relating to sexual offenses, prostitution, obscenity, etc., or any provisions of this chapter on a charge of violating a similar law or ordinance of this or any other jurisdiction.

(b) Discovery by the city recorder of a false statement on the application.

(c) Upon evidence presented before the city recorder that the permittee (if the permittee is a partnership or association, any partner or member thereof; or if the permittee is a corporation, any officer, director or manager thereof, or shareholder, or if the permittee is a limited liability entity, any member or manager thereof) has within a period of one (1) year violated any provisions of this chapter or any

other ordinance of this city or any city of this state or laws of the state relating to sexual offenses, prostitution, obscenity, or other similar offenses.

(d) Upon evidence presented before the city recorder establishing that within a period of one (1) year any massage technician or other agent or person under the control or supervision of the permittee has violated any provisions of this chapter or violated any other ordinance of the city laws of the state relating to sexual offenses, prostitution, obscenity or similar offenses.

(3) Notice of hearing. Note of hearing before the city recorder for revocation of the permit shall be given in writing, setting forth the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least five (5) days prior to the date set for hearing.

Section 8. Massage parlor technician permit--required. It shall be unlawful for any person to perform the services of massage technician at a massage parlor in the city without a valid permit issued pursuant to this ordinance or any prior ordinance.

Section 9. Same--application; renewal; fees. (1) Any person desiring a permit to perform the services of a massage technician at a massage parlor in the city shall make application in triplicate form to the city recorder. Each such application shall state under oath the name, address, telephone number, last previous address, date of birth, place of birth, height, weight, and current and last previous employment of the applicant. In addition, such application has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any law relating to sexual offenses, prostitution, obscenity, etc., or any provision of this ordinance, or on a charge of violating a similar law or ordinance in any other jurisdiction.

(2) The application shall state thereon that: "It is unlawful for any person to make a false statement on this application, and discovery of a false statement shall constitute grounds for denial of an application or revocation of a permit."

(3) Each applicant shall have his or her fingerprints taken, which fingerprints shall constitute part of the application.

(4) A photograph of the applicant taken within sixty (60) days immediately prior to the date of application, which picture shall not be less than two (2) inches by two (2) inches showing the head and shoulders of the applicant in a clear and distinguishable manner, shall be filed with the application.

(5) Each massage technician permit shall expire one year from the date of issuance. Each renewal application shall be accompanied by an investigation fee of fifty dollars (\$50.00).

Section 10. Same--investigation of applicant; grounds for denial of application. (1) Upon receipt of the application and fee as provided for in this ordinance, the city recorder shall make or cause to be made a thorough investigation of the criminal record of the applicant.

(2) The city recorder shall deny any application for a massage technician permit under this chapter after notice and hearing, if the city recorder finds that the applicant has within a period of two (2) years prior to his application been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any law relating to sexual offenses, prostitution, obscenity, etc., or any provision of this chapter, or on a charge of violating a similar law or ordinance in this or any other jurisdiction. The making of a false statement on the application shall also be grounds for denial of this application. Notice of the hearing before the city recorder for denial of this application shall be given in writing, setting forth the grounds of the complaint and the time and place of hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least five (5) days prior to the date set for hearing.

Section 11. Same--display. Every person to whom a massage technician permit shall have been granted shall, while in a massage parlor, carry on his or her person or display in a conspicuous place in the massage parlor or establishment, such massage technician permit.

Section 12. Same--revocation; grounds; notice to permittee. Any massage technician permit granted under this chapter shall be revoked by the city manager after notice and hearing if the permittee has within a period of two (2) years been convicted, pleaded nolo contendere or suffered a forfeiture on a charge of violating any law relating to sexual offenses, prostitution, obscenity, etc., or any provision of this chapter, or on a charge of violating a similar law or ordinance in this or any other jurisdiction. Discovery of a false statement on the application shall also be grounds for revocation of the permit. Notice of the hearing before the city manager or revocation of the permit shall be given in writing, setting forth the grounds of the complaint and the time and place of hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least five (5) days prior to the date set for hearing.

Section 13. Suspension of permits; reinstatement. If the city recorder or her duly authorized representatives, find that a massage parlor or a massage technician is not in compliance with the requirements set forth in this chapter, or the permittee has refused, the city recorder, or her duly authorized representatives the right to enter the premises to enforce the provisions of this chapter, upon report to the city recorder he may enter any order for the immediate suspension of the massage parlor permit or massage technician permit, as the case may be, until such time as he finds that the reason for such suspension no longer exists. A copy of the order shall be sent

to the massage parlor and/or the massage technician at his or her place of business by certified mail, which order shall set forth the reasons for such suspension. No person shall operate a massage parlor or perform the services of a massage technician at a massage parlor when subject to an order of suspension. The city recorder shall reinstate a suspended permit when he has been satisfied that the massage parlor or massage technician complies with the applicable provisions of this chapter.

Section 14. Appeals from permit denials, suspensions or revocations. Any applicant or permittee aggrieved by the actions of the city manager in the denial of an application for a massage parlor permit or massage technician permit, or by the decision of the city recorder with reference to the revocation or suspension of a massage establishment permit or massage technician permit, shall have the right to appeal to the city commission. Such appeal shall be taken by filing with the city recorder, within ten (10) days after the action complained of has been taken, a written statement setting forth fully the grounds for appeal. The city recorder shall forthwith notify the city commission, which shall schedule a public hearing and shall give notice of such hearing to the appellant. The city commission may reverse or affirm or may modify any decision of the city recorder, and may make such decisions or impose such conditions as the facts may warrant; and it may order that a permit be granted, suspended or revoked. The decision and order of the city commission on such appeal shall be final and conclusive.

Section 15. Public health card required for a massage technician. It shall be unlawful for any person to perform the services of massage technician at a massage parlor in the city without a valid public health card issued pursuant to this ordinance or any prior ordinance.

Section 16. Examination of massage techniques; issuance of public health card. (1) All persons who desire to perform the services of massage technician at a massage parlor shall first undergo a physical examination for contagious and communicable diseases, which shall include a recognized blood test for syphilis, a culture for gonorrhea, a chest x-ray which is to be made and interpreted by a trained radiologist, and shall furnish a certificate based upon and issued within thirty (30) days of such examination by the Claiborne County health department and stating that the person examined is either free from any contagious or communicable disease or incapable of communicating any of such diseases to others. Such persons shall undergo the physical examination referred to above and submit to the city manager the certificate required herein within five (5) days of the commencement of their employment and at least once every six (6) months thereafter.

(2) When there is cause to believe that the massage technician is capable of communicating any contagious disease to others, the city recorder

may at any time require an immediate physical examination of any such person.

(3) The employer of any such person shall require all such persons to undergo the examination and obtain the certificate provided by this section, shall register at the place of employment the name and date of employment of each employee, and shall have the health cards and registration of all employees available for the chief of police, or the city manager, or their duly authorized representative at all reasonable times.

Section 17. Right of entry. The mayor or city recorder or their duly authorized representatives are hereby authorized to enter, examine and survey any premises in the city for which a massage parlor permit has been issued pursuant to this article to enforce the provisions of this chapter, and for no other purpose. Should the authority to inspect premises be delegated to another person, such person shall be proved with written delegation of authority to be shown to the permittee upon request at the time of inspection. If such inspection reveals conditions which in the opinion of the inspector warrants a more thorough inspection by the building official, the Claiborne County health department, the bureau of fire prevention, or similar person or agency charged with responsibility for the enforcement of particular health and safety ordinances or laws of the city or the state, he shall report such condition to such person or agency and request that such premises be examined and any findings be reported to the chief of police and the city manager. This section shall not be deemed to restrict or to limit the right of entry otherwise vested in any law enforcement of health and safety or criminal laws wherein such right of entry is vested by other ordinances or laws.

Section 18. Minimum standards for parlors. No massage parlor shall be operated, established or maintained in the city that does not comply with the following minimum standards:

(1) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instrument and materials shall be disinfected after use on each patron.

(2) Closed cabinets shall be provided and used for the storage of clean linen, towels and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.

(3) Clean linen and towels shall be provided for each massage patron. No common use of towels or linens shall be permitted.

(4) All massage tables, bathtubs, shower stalls, steam or bath areas and floors shall have surfaces which may be readily disinfected.

(5) Oils, creams, lots or other preparations used in administering massages shall be kept in clean, closed containers or cabinets.

(6) Adequate bathing, dressing, locker and toilet facilities shall be provided for the patrons to be served at any given time. Separate bathing, dressing, locker and toilet facilities shall be provided for male and female patrons.

(7) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use. When carpeting is used on the floors, it shall be kept dry.

(8) The premises shall be equipped with a service sink for custodial services.

(9) Eating in the massage work areas shall not be permitted.

(10) Animals, except for seeing eye dogs, shall not be permitted in the massage work areas.

(11) No massage parlor shall employ a massage technician who does not comply with the provisions of this chapter.

Section 19. Individual health requirements for technicians. No massage technician shall administer massage at a massage parlor who does not comply with the following individual health requirements:

(1) No massage technician shall administer a massage if such massage technicians knows or should know that he or she is not free of any contagious or communicable disease.

(2) No massage technician shall administer a massage to a patron exhibiting any skin fungus, skin infection, skin inflammation, or skin eruption; provided that a physician duly licensed by the state may certify that such person may be safely massaged, and prescribing the conditions thereof.

(3) Each massage technician shall wash his or her hands in hot running water, using a proper soap or disinfectant before administering a massage to each person.

Section 20. Unlawful acts. (1) It shall be unlawful for any person in a massage parlor to place his or her hand or hands upon or to touch with any part of his or her body, or to fondle in any manner, or to massage, a sexual or genital part of any other person.

(2) It shall be unlawful for any person in a massage parlor to expose his or her sexual or genital parts, or any portion thereof, to any other person of the opposite sex.

(3) It shall be unlawful for any person while in the presence of any other person of the opposite sex in a massage parlor to fail to conceal with a fully opaque covering the sexual or genital parts of his or her body.

(4) It shall be unlawful for any person owning, operating or managing parlor knowingly to cause, allow or permit in or about such

massage parlor any agent, employee, or any other person under his control or supervision to perform such acts prohibited in this chapter.

(5) Sexual or genital parts shall include the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breast of a female.

(6) Every person owning, operating or managing a massage parlor shall post a copy of this chapter in a conspicuous place in the massage parlor so that it may be readily seen by persons entering the premises.

(7) It shall be unlawful for any massage parlor to provide massage services at any time between the hours of 9:00 P.M. to 7:00 A.M. and on Sundays; however, it shall be lawful for such establishments to remain open for the transaction of other lawful business.

(8) The administering of massage shall not be conducted in private rooms or areas, but shall be conducted in separate general areas for males and females, or if the same general area is used by both male and female customers, then different times for such separate use shall be designated and posted.

(9) It shall be unlawful for any person in a massage parlor to administer a massage to a person of the opposite sex.

Section 21. Alcoholic beverages. No beer or alcoholic beverages may be sold, served or consumed upon any premises holding a license as of provided for in this chapter.

Section 22. Penalty. Any person violating any of the provisions of this chapter, upon conviction by the court, shall be imprisoned for not less than fifteen (15) days nor more than thirty (30) days, and shall be fined not less than fifty dollars (\$50.00), for each violation, and each day of violation of any provision of this chapter shall constitute a separate offense.

Section 23. Reserved.

Now, therefore be it ordained by the Board of Mayor and Aldermen of the City of Harrogate, Tennessee that this ordinance shall be effective upon its passage the public welfare requiring it.

Mayor Bill Fultz

Attest: Rose Kiser, Recorder

Passed 1st reading _____

Passed 2nd reading _____