

CHAPTER 113: MASSAGE ESTABLISHMENTS/MASSAGE THERAPY

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§ 113.01 SHORT TITLE.

The ordinance codified in this chapter shall be known and amended as the “St. Joseph County Massage Establishments/Therapy Ordinance”.

§ 113.02 PURPOSE.

The purpose of this chapter is to protect public health and safety by establishing procedures that will ensure St. Joseph County residents that all massage establishments will be operated and maintained in a clean and sanitary manner and that all persons performing massage therapy will have met the training requirements to competently practice or administer massage.

§ 113.03 INCORPORATION AND ADOPTION.

Indiana Department of Fire and Building Service 675 I.A.C. 20-3 and Indiana Occupational Safety and Health Administration (IOSHA), 29 C.F.R. 1910.1030 are hereby incorporated into this chapter. A copy of these rules and regulations are on file in the office of the St. Joseph County Health Department.

§ 113.04 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. Any person applying for a permit under this chapter, whether for a new or renewal permit.

BOARD OF HEALTH. The St. Joseph County Board of Health.

DISINFECTION. A process that destroys all microorganisms, with the exception of high numbers of bacterial spores through the use of high temperature or an Environmental Protection Agency registered tuberculocidal disinfectant.

HEALTH DEPARTMENT. The St. Joseph County Health Department.

HEALTH OFFICER. The St. Joseph County Health Officer or his or her duly authorized representative.

INDIANA STATE BOARD OF MASSAGE THERAPY. The board established by Indiana Code IC 25-21.8-2 to provide for the certification of persons who claim to be Certified Massage Therapists or Massage Therapists.

INSPECTION. An onsite review of the massage establishment and any other portion of the establishment and associated records as deemed necessary by the Health Department.

MASSAGE ESTABLISHMENT. Any business located in a building, room, place or establishment, utilized for the practice of massage therapy, other than:

- (1) A Recognized School of massage therapy; or
- (2) An ISDH licensed medical facility.

INDIANA STATE MASSAGE THERAPIST CERTIFICATE. A certificate issued by the Indiana State Board of Massage Therapy for persons who claim to be Certified Massage Therapists and Massage Therapists.

ISDH. Indiana State Department of Health.

MASSAGE THERAPY. The manipulation of superficial and deeper layers of the muscle and connective tissue using various techniques, to enhance function, aid in the healing process, or promote relaxation and well-being with the hands, fingers, elbows, knees, feet, and legs. Massage therapy involves working and acting upon the body with pressure through structured and unstructured, stationary, or moving tension, motion, or vibration, performed manually or with mechanical aids. Target tissues may include muscles, tendons, ligaments, fascia, skin, joints, or other connective tissue, as well as lymphatic vessels, or organs or the gastrointestinal system. Target tissue specifically excludes the genitals or female breasts.

PERSON. Any individual, partnership, firm, company, corporation, association or his or her legal representative or agent.

RECOGNIZED SCHOOL. Any school or institution of learning which is a member in good standing of at least one of the following:

- (1) The American Massage Therapy Association;
- (2) The American Medical Massage Therapy Association;
- (3) The National Certification Board for Therapeutic Massage and Bodywork;
- (4) A state agency or a board or other organization established by a state law which has as its purpose the regulation or monitoring of the massage industry and/or therapists in the state;
- (5) A school that is part of or operated by a state licensed community college, college, or university;
or
- (6) A school, as determined by the Health Department, which has for its purpose the teaching of the theory, ethics, practice methods, and profession or work of massage therapy and which requires that a student successfully complete a course of study of not less than 500 credit hours of classroom instruction in massage therapy and related training.

STERILIZE. The use of a physical or chemical procedure to destroy all microbial life, including highly resistant bacterial endospores.

§ 113.05 PERMIT REQUIREMENTS.

- (A) All persons intending to operate a massage therapy establishment or practice massage therapy shall obtain the appropriate permit from the Health Department subject to the exceptions listed in Section 113.05 (B).
- (B) A person may operate a massage therapy establishment or practice ~~as a~~ massage therapy without obtaining a permit if the person is a:
 - (1) State of Indiana licensed professional nurse, registered nurse, physician, chiropractor, osteopath, physical therapist, or physical therapist assistant with their license displayed in a prominent location;
 - (2) Student enrolled in a Recognized School and performing massage therapy only as part of his or her training requirement;
 - (3) Athletic trainer who has received training in massage therapy and who is providing massage therapy in a training facility that has sufficient space and training equipment to serve 10 customers at once; or
 - (4) State of Indiana licensed esthetician who is only performing manipulation of the skin at a State of Indiana licensed salon with the license displayed in a prominent location.

An esthetician may not perform massage therapy of the muscle and connective tissue without obtaining a massage therapy license.

- (C) Irrespective of all other conditions, requirements, and exceptions listed in Code 113, a massage establishment permit or massage therapy permit shall not be issued to any person who has been convicted of a felony in any state or country involving a sex act.

§ 113.06 APPLICATION FOR MASSAGE ESTABLISHMENT PERMIT.

(A) No person shall allow massage therapy to be performed in or on a property they own without first obtaining a current massage establishment permit from the Health Department.

(B) An application for a massage establishment permit shall be renewed annually and shall be:

(1) Made on or before February 28 of each calendar year; and

(2) Made on an application form provided by the Health Department which shall include the:

(1) The legal name of the establishment;

(2) The current address and telephone number of the establishment and the residence of the applicant;

(3) A picture of the owner of the establishment who must be the applicant;

(4) The applicant's business or employment history for the three years immediately preceding the date of application, including but not limited to whether the person previously operating under a permit or license in another city/state has had the license suspended or revoked;

(5) The reason for the suspension/revocation and the business activity or occupation subsequent to the action of suspension or revocation;

(6) Information regarding the owner's standing with any state, regional or national agency of government charged with regulating massage therapy schools or programs; and

(C) The applicant shall provide documentation that location of the business is properly zoned by the proper governmental agency in which the business is located.

(D) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation, and the names and addresses of each of its current officers.

§ 113.07 INSPECTION OF MASSAGE ESTABLISHMENT.

- (A) The Health Department shall inspect massage establishment locations to determine compliance with this chapter.
- (B) Inspections are to be made at reasonable times with due regard to the nature of the business to be inspected.

§ 113.08 PERMIT REQUIREMENTS FOR MASSAGE ESTABLISHMENTS.

- (A) It shall be unlawful for any person to operate a massage establishment in St. Joseph County, Indiana without a valid permit from the Health Department. This permit shall be prominently displayed for full viewing by the customer on the premises of the permitted establishment at all times during business hours. Only persons who own a facility that meets all of the applicable provisions of this chapter shall be entitled to receive and retain such a permit.
- (B) All massage establishments shall pay an annual permit fee as prescribed by the St. Joseph County Board of Commissioners, which shall be paid to the St. Joseph County Health Department at the time an application for permit is filed. All permit fees shall be payable on or before the last day of February and shall be subject to the addition of a late penalty.

§ 113.09 PERFORMING MASSAGE THERAPY WITHOUT A PERMIT.

- (A) The owners and/or operators of a massage establishment shall not allow massage therapy to be performed by any person that does not possess a current massage therapy permit from the Health Department.
- (B) The Health Department shall suspend or revoke the license of any massage establishment where a person that does not possess a current massage therapy permit from the Health Department performs massage therapy.

§ 113.10 MASSAGE ESTABLISHMENT FACILITIES.

- (A) Every massage establishment shall have a restroom with a minimum of one toilet and one washbasin equipped with both hot and cold water, anti-bacterial soap, sanitary towels and the door equipped with a lock for privacy.
- (B) If a shower is provided it shall be a single person shower and no one except the customer shall use or enter the shower.
- (C) Lighting in or on the establishment in colors other than white or natural is prohibited.
- (D) Rooms shall be equipped with cabinets for the storage of clean linen and chemicals and biohazard receptacles for the storage of soiled linen.
- (E) No stuffed or upholstered furniture or beds and mattresses shall be permitted in rooms in which massage is to be practiced or administered. The rooms shall be equipped with massage tables having a hard surface impervious to liquids with a width of no more than three feet and a length of no more than eight feet. The surface of the tables shall be positioned at least two feet from the

surface of the floor so as to allow for free access to the floor beneath. The tables may be equipped with either nondisposable pads or coverings or disposable coverings not more than two and one-half inches thick. Nondisposable pads or coverings shall be removable, impervious and cleanable.

- (F) The following requirements shall be used to maintain clean and sanitary linens.
 - (1) Soiled linen shall be handled as little as possible and with minimum agitation to prevent gross microbial contamination of the air and of persons handling the linen.
 - (2) All soiled linen shall be bagged or put into carts at the location where it was used;
 - (3) Linen soiled with blood or body fluids, including perspiration, shall be deposited and transported in bags to prevent leakage and human contact with the blood or bodily fluids.
 - (4) Linen shall be washed with a detergent in water at least 71°C (160°F) for 25 minutes.
 - (5) Clean linen shall be transported and stored by methods that will ensure its cleanliness.
 - (6) All washed linen shall be dried at a high temperature setting.
- (G) All exterior windows of the massage establishment, except those in a room where massage therapy is performed, shall remain at least 75 percent uncovered by curtains, shades, or any other material that restricts the view from the outside during business hours.
- (H) The person performing massage therapy shall prominently display their massage therapy permit or a clearly legible copy for full viewing by the customer while performing massage therapy.

§ 113.11 MESSAGE ESTABLISHMENT OPERATION.

- (A) All massage establishments and persons performing massage therapy shall comply with the following operating requirements. These requirements shall be prominently and publicly displayed in a conspicuous place upon every premises licensed under the provisions of this chapter.
 - (1) All massage establishments shall post the hours of operation. Massage therapists shall not practice or administer massage at massage establishments at any time outside of the hours of operation.
 - (2) Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Towels and linens shall not be used on more than one patron unless they have first been laundered and disinfected. Disposable coverings and towels shall not be used on more than one patron.
 - (3) Instruments utilized while performing a massage that come into direct contact with the patron's skin must be sterilized. These instruments must be kept in single-use packages until use and then re-sterilized before use again. Any instrument used during a massage that does not come

into direct contact with the skin of the patron must undergo disinfection following its use. Massage table pads must undergo disinfection following their use. All chemical containers shall be stored in cabinets reserved solely for that purpose.

- (4) Massages shall not be given unless all patrons are wearing clothing fully covering their genitals and female patrons are additionally wearing clothing fully covering their breasts. Where such clothing is furnished to patrons by the massage establishment, it shall not be used by more than one patron unless it has first been laundered and disinfected. Persons performing massage therapy shall be fully clothed from the knee to the neck in clean clothing.
- (5) Massages shall not be given to patrons who have open sores or other visual signs of contagion or communicable disease.
- (6) No person in any massage establishment under this section shall place his or her hand upon, touch with any part of his or her body, fondle in any manner, or massage a sexual and/or genital area of any other person.
- (7) No person employed in any massage establishment under this section shall perform, offer or agree to perform any act which shall require the touching of the patron's sexual and/or genital area.
- (8) Massage establishments are prohibited from installing or maintaining any lock or similar device on any door to an area where massage services are provided.
- (9) The entrance to the massage establishment shall remain unlocked during business hours.
- (10) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.
- (11) No massage establishment shall place, publish or distribute or cause to be placed, published or distributed, any advertisement, picture or statement which is known or through the exercise of reasonable care, should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any massage services or is sexually suggestive.
- (12) No bathing or cleaning of a customer shall be performed by any person other than the customer.

§ 113.12 MASSAGE THERAPY PERMITS.

- (A) No person shall perform massage therapy without first obtaining a current massage therapy permit from the Health Department.
- (B) An application for a massage therapy permit shall be:
 - (1) Made on or before February 28 of each calendar year; and

(2) Made on an application form provided by the Health Department which shall include:

- i. The legal name of the applicant;
- ii. The current address where the applicant will reside while performing massage therapy in St. Joseph County;
- iii. A copy of the applicant's driver's license or government issued identification;
- iv. A copy of the applicant's Indiana State Board of Massage Therapy Certificate;
- v. A copy of the applicant's diploma or certificate of graduation from a recognized school of massage therapy where they received their training in massage therapy;
- vi. The name of the massage establishment at which the applicant is or expects to be employed, if any; and
- vii. Other related information as may be deemed reasonable and necessary by the Health Department to determine the validity of the diploma or certificate from a recognized school.

(C) The massage establishment where the applicant intends to work must possess a current massage establishment permit from the Health Department.

(D) If the Indiana State Board of Massage Therapy ceases to require background checks for applicants or validate the massage therapy school which provided training to the applicant, Item 113.12 (iv) shall not be required and the following shall be required in its place.

- (1) The applicant shall cause to be provided to the Health Department, clear, verifiable, and convincing information that the school that provided the applicant's training in massage therapy is a Recognized School as defined in Section 113.04 and the applicant received a certification or diploma in massage therapy that included 500 hours of applicable classroom training. This information shall include one of the two items listed below:
 - i. A statement from one of the organizations listed in the definition of Recognized School that the schools is a member in good standing in Section 113.04 or
 - ii. Information adequate for the Health Department to determine the schools is a recognized school and the applicant completed the required training. In making this determination, the Health Department may require the following:
 - i. Licensing or membership information showing the school is a Recognized School;
 - ii. Requirements for a student to obtain a certification or diploma;
 - iii. Information concerning suspension or cancelation of any massage licenses, approval, of certifications in the last 10 years;

- iv. Transcripts of classroom study;
- v. A certification of graduation or diploma showing the applicant completed the training required; and
- vi. Other information as may be deemed reasonable and necessary for the Health Department to determine the school is a Recognized School and the applicant for a permit has obtained the required training and certification or diploma.

§ 113.13 MASSAGE THERAPY REQUIREMENTS.

- (A) It shall be unlawful for any person to perform massage therapy in St. Joseph County unless he or she has a valid permit issued pursuant to the provisions of Section 113.12. A massage therapy permit shall be valid for a term of one year, and shall be renewed annually on or prior to the last day of February.
- (B) An annual massage therapy permit fee as prescribed by the St. Joseph County Board of Commissioners shall be paid to the St. Joseph County Health Department at the time an application for permit is filed. All permit fees shall be payable on or before the last day of February and shall be subject to the addition of a late penalty.

§ 113.14 ENFORCEMENT.

- (A) The County Board of Health may adopt, amend or rescind any rules and regulations and standards as deemed necessary for proper enforcement and to carry out the purposes and intent of this chapter. This shall be accomplished using public comment periods, public meetings and public hearings in accordance with state law.
- (B) The Health Officer or an authorized representative, bearing proper credentials and identification, may enter upon and inspect an establishment where massage therapy is performed at proper times after due notice, for such purposes as inspections, observation, and records examination necessary to carry out the provisions of this chapter.
 - (1) In the event a person, who has common ownership over a building or structure or their authorized representative or the massage establishment permittee or their authorized representative does not permit an inspection by an authorized representative of the Health Department, it shall be grounds for the immediate suspension of the license to perform massage therapy at the establishment and the suspension shall remain in effect unless rescinded by the Health Officer through the process described in Sections 113.14.D and E. Failure of the person to permit an inspection will be sufficient grounds and probable cause for a court of competent jurisdiction to issue an administrative warrant for the purpose of inspecting and records examination necessary to carry out the provisions of this chapter.
- (C) Whenever the Health Department determines that there are reasonable grounds to believe that there has been a violation of any provision of this chapter, the Health Department shall give notice in

writing of the alleged violation to the person or persons responsible thereof, and to any known agent of the person. This notice shall:

- (1) Include a statement of reasons why it is being issued;
- (2) Allow a reasonable time for the performance of any corrective action it requires;
- (3) Describe the penalty that is imposed for the violation and;
- (4) Be served upon the owner or his or her agent or the operator, as the case may require; provided that the notice shall be deemed to be properly served upon the owner or agent or upon the operator, if a copy thereof is served upon him or her personally, or if a copy thereof is sent by certified mail to his or her last known address, or if a copy thereof is posted in a conspicuous place in the dwelling affected by the notice, or if he or she is served with the notice by any other method authorized or required under the laws of this state.

(D) Any person affected by any notice issued by the Health Department may request and shall be granted a hearing on the matter before the Health Officer, provided that the person shall file with the office of the Health Officer by mail postmarked or hand delivered, within 15 days after service of the notice, a written petition requesting the hearing and setting forth a brief statement of the grounds thereof.

- (1) Any notice properly served shall automatically become an order if a written petition for a hearing is not filed in the office of the Health Officer within 15 days after the notice is served.
- (2) Any permit which has been suspended by a notice shall be deemed to be automatically revoked if a petition for a hearing is not filed in the office of the Health Officer within 15 days after the notice is served.

(E) Upon receipt of the petition, the Health Officer shall arrange a time and place for the hearing and shall give the petitioner written notice thereof. The hearing shall be held as soon as practicable after the receipt of a request thereof. The matter shall be held in an open hearing. At the hearing, the petitioner shall be given an opportunity to be heard and to show cause why the notice should not be complied with.

(F) After the hearing, the Health Officer shall sustain, modify or withdraw the notice, in writing to the plaintiff depending upon the findings as to whether the provisions of this chapter have been complied with. The decision of the Health Officer shall be a final order.

(G) Whenever the Health Officer finds that an emergency exists which requires immediate action to protect the public's health, the Health Officer may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that the action be taken as the Health Officer deems necessary to meet the emergency including the immediate suspension of a massage establishment or therapy license. Notwithstanding any other provisions of this chapter, the order shall be effective immediately. Any person receiving such an order may seek a hearing under divisions (D) and (E) of this section, while carrying out the order, and shall have the right to recover any of his or her response costs to the extent that the order or any portion thereof is found to have been arbitrary or

capricious or otherwise not in accordance with law. After such consideration, depending upon the finding as to whether the provisions of this chapter have been complied with, the Health Officer shall continue the order in effect, modify or revoke the permit.

§ 113.15 VARIANCES.

- (A) The Health Officer shall consider a petition for variances, exemptions and exceptions from provisions of this chapter, and shall render a decision in writing no later than 60 days after the petition is submitted to the Health Officer. A decision by the Health Officer shall be a final order.

§ 113.16 DISCLAIMER OF LIABILITY.

- (A) This chapter shall not create liability on the part of the Health Department or any officer, employee or agent thereof for any damage which may result from reliance on this chapter or on any administrative decision lawfully made thereunder.
- (B) All inspections shall be at the discretion of the Health Department, and nothing in this chapter shall be construed as requiring the Health Department to conduct any inspection, nor shall any inspection imply a duty to conduct any other inspection. Nothing in this chapter shall be construed to hold the Health Department responsible for any damage to persons or property by any failure to make an inspection or re-inspection.

§ 113.17 SEVERABILITY

If any section or part of this Chapter is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, that holding shall not affect the validity of the remaining portions of the Chapter, and the remaining portions shall be and remain in full force and effect.

§ 113.99 PENALTY.

- (A) Any person determined by the Health Officer to be in violation of this chapter shall be punished for each offense by a penalty established by the Health Officer for first, second and subsequent offenses, as set out in the Appendix: Schedule of Fines and Fees.
- (B) Each day a person fails to perform the corrective action in accordance with the schedule identified in an abatement order issued by the Health Officer shall constitute a distinct and separate violation.
- (C) The Health Officer may restrict, suspend, or revoke any permit issued pursuant to the provisions of this Chapter for:
 - (1) Repeated substantive violations of this Chapter;
 - (2) Failure to perform a corrective action ordered by the Health Department;
 - (3) Providing false information to the Health Department; or
 - (4) When determined by the Health Officer to be reasonable and necessary to protect public health or safety.

(D) Any person violating any provisions of this chapter shall also be liable to the Health Department for any expense, loss or damage occasioned it by reason of the violation, including the costs for labor, supplies, equipment and services.