

CHAPTER 16

MASSAGE THERAPY CLINIC LICENSE

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16.01 Definitions.

The following words or phrases shall have the meanings ascribed to them below, unless otherwise indicated by the context:

Massage therapist: Any person who, for any consideration whatsoever, engages in the practice of massage therapy and is licensed by the Illinois Department of Financial and Professional Regulation.

Massage therapy license: A valid massage therapy license issued by the Illinois Department of Financial and Professional Regulations.

Massage therapy clinic: Any place of business having a source of income or compensation derived from the practice of therapeutic massage as defined herein where a licensed massage therapist administers therapeutic massage or from where a massage therapist is dispatched to administer therapeutic massage as defined herein. A massage therapy clinic may be located within a massage therapist's home, provided it is in compliance with the terms of this Chapter 16 and other ordinances of the Village.

Patron: Any person who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give other consideration therefore.

Sexual or genital: The term sexual or genital area is defined including the genitals, pubic area, anus, or perineum of any person, or the vulva or breasts of a female.

Therapeutic massage: Scientific health care, health maintenance and rehabilitation techniques applied to a client by a trained and professionally-licensed massage therapist for the purpose of causing increased circulation throughout the body, ridding the body of waste products and/or toxins, inducing relaxation, easing mental and physical tension, alleviating aches and pains, and the break up of fatty tissues, adhesions, scar tissue and muscle spasm, and releasing the body's endorphins. Such techniques are provided under circumstances where it is reasonably expected that the client, or a third party acting on the client's behalf, will pay money or give other consideration therefore.

Therapeutic massage may include but is not limited to joint mobilization techniques, stretches, effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes and reasonable method of pressure on the external soft parts of the body with the hands, elbows or forearms, or with the aid of any mechanical or electrical apparatus or appliances, with or without rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. Therapeutic massage does not diagnose or treat classified diseases, practice spinal manipulation or prescribe medicine or drugs.

16.02 License Required.

It shall be unlawful for any person, association, firm or corporation to operate a massage therapy clinic in the Village without a valid and current massage therapy clinic license issued by the Village pursuant to the terms of this Chapter 16. A separate license shall be required for each massage therapy clinic location regardless of whether such multiple clinics are operated by the same person, association, firm or corporation.

16.03 Exemptions.

The licensing requirements of this Chapter 16 shall not be applicable to:

1. Hospitals, nursing homes and persons holding an unrevoked certificate to practice the healing arts under the laws of the Illinois Department of Professional Regulation, including but not limited to chiropractors, naprapaths, nurses, occupational therapists, physical therapists and physicians.
2. Any barber, cosmetologist or nail technician services which involve incidental physical contact, such as scalp rubs and facials, which otherwise qualify as massage activities. This exemption is not intended to include, and does not permit, general massage activities as part of any barber, cosmetologist or nail technician business beyond that authorized by the state license or certification.
3. Any state registered athletic trainer who administers such athletic-related massage in the normal course of training duties.
4. Provided further, a massage therapist's license shall be required for the individual massage therapist performing massage activities in such exempted business.

5. Where massage services are actually performed at the patron's premises, including the patron's place of business or residence, a massage therapy clinic license shall not be required for such patron's premises. However, a massage therapist's license shall be required for the massage therapist performing massage activities in such patron's premises.

16.04 Application for Massage Therapy Clinic License.

Any person desiring to obtain a license to operate a massage therapy clinic shall make application to the Village Clerk. The Village Clerk shall have the right to confirm any of the information asked for, or provided in the application, and shall work in conjunction with the Police Department where applicable. Applications shall include the following:

1. The name (including nicknames or aliases) and address, telephone number, social security number and age of the applicant; the registered agent of the applicant if the applicant is a corporation; and the general or managing partners if the applicant is a partnership.
2. The location of the massage therapy clinic.
3. A copy of the license issued by the State of Illinois in accordance with the Massage Licensing Act, 225 ILCS 57
4. A complete statement of all convictions of the applicant as provided in this Section 16.04. If the applicant is a corporation, such statement shall include applicant's officers, and directors thereof, and any stockholder or stockholders owning in the aggregate more than 20 percent of the stock of such corporation. If the applicant is a partnership, such statement shall include all general partners, and any limited partner owning more than 20 percent of the aggregate limited partner interest in such partnership. Such listing shall include the following:
 - (a) Any offense involving sexual misconduct with children or other sex offenses as defined in 720 ILCS 5/11-6 *et seq.*, as amended.
 - (b) A felony based upon conduct or involvement in such business or activity or related or similar business or activity, within the past 10 years; or
 - (c) A felony unrelated to conduct or involvement in such business or activity or related to similar business or activity, but which felony involved the use of a deadly weapon, violations of the Cannabis Control Act (720 ILCS 550/1 *et seq.*) or the Controlled Substance Act (720 ILCS 570/110 *et seq.*) or violence against another person, including rape, within the past 10 years; or

- (d) A misdemeanor or licensing ordinance violation, based upon conduct or involvement in such business or activity or related or similar business or activity, within the past 10 years.
- 5. A description of the proposed massage therapy clinic, including the number of massage therapists, other activities or business conducted at the same location, and the physical facilities to be used, with a floor layout diagram of same attached thereto.
- 6. A statement of whether the business will be conducted by a manager. In such case the manager's name, address, telephone number and age shall be provided, along with a statement of any convictions as set forth in this Section 16.04.
- 7. A current certificate of inspection of the premises from the McHenry County Department of Health, if required.
- 8. The license fee as provided in Section 16.08 herein.
- 9. Business, occupation or employment of the applicant for three years immediately preceding the date of application.
- 10. In the event the applicant is made aware that any information or document submitted as part of this application process is inaccurate or incomplete, applicant shall immediately notify the Village and provide appropriate corrections. Failure to accurately and completely provide, or as necessary update, required information, may delay the processing of such application or result in its denial.
- 11. Proof of United States citizenship, permanent resident alien status or a valid work permit, as well as proof of professional liability insurance in an amount of not less than \$1,000,000 per each occurrence.

16.05 Application Processing.

- A. An application shall not be considered proper or filed until all information and material required of the applicant pursuant to Section 16.04 herein has been submitted.
- B. Upon receipt of a proper application, the Village Clerk, along with the Police Department or designee, shall review the information contained in the application and shall determine compliance with all applicable laws of the Village. . The applicant for a massage therapy clinic license shall allow the Building Code Enforcement Officer to inspect the premises and/or review plans for the facility, to ascertain whether the premises and/or planned changes are in conformance with the Village Building Code. In the event plans are submitted prior to

construction, a final inspection will be conducted prior to issuance of the license to assure compliance with said Building Code.

- C. The review, including any required inspections shall be completed within 30 business days after receipt of a proper application. Provided, the Village Clerk may extend this review period an additional period, not to exceed an additional 10 business days, upon a finding that such additional period is needed to properly complete the investigation. Provided, whenever such extension period is invoked, written notice shall be provided to the applicant along with the specific reasons for such extension.
- D. If, within 10 business days following completion of the review, the Village Clerk determines that the applicant and premises are in compliance with the applicable laws of the Village and the State, the Village Clerk shall issue the license.
- E. If, within 10 business days following completion of the review, the Village Clerk determines that the premises are not in compliance with the applicable laws of the Village and the State, the Village Clerk shall notify the applicant in writing that the license has been denied, setting forth the reasons and advising the applicant of his or her right to appeal pursuant to Section 16.15 herein. Unless a timely appeal has been filed as provided in Section 16.15 herein, such denials shall be final and effective on the 10th day following service of the notice on the applicant. The fee paid by the applicant (if any) pursuant to Section 16.08, shall be returned, less \$25.00 which will be retained as the processing fee.

16.06 Transfer, Changes in Ownership or Management.

- A. Any license issued pursuant to this Chapter 16 shall be applicable only to the specific applicant and location designated, and may not be sold, transferred or otherwise assigned. Provided, where the licensee remains the same, but a request is made to designate and substitute a different location, the Village Clerk may approve such new location upon submission of proof that such location is in compliance with the provisions of Section 16.10 herein.
- B. For purposes of this Chapter 16, a transfer of ownership or control of a massage therapy clinic shall mean the sale, lease or sublease of the business, the transfer of securities which constitute a controlling interest in the business whether by sale, exchange or similar means, or the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control, or any person not previously listed as an applicant pursuant to Section 16.04 herein acquires an ownership interest in the business of 20 percent or more.
- C. A transfer of ownership or control of a massage therapy clinic shall constitute change in the licensee and the existing license shall be deemed surrendered and extinguished. A new application and license shall be filed and processed as

provided in Section 16.04 prior to such transfer taking effect. Any transfer in the ownership or control of a massage therapy clinic in violation of this Section 16.06 shall constitute operation of such business without a license.

- D. Notice shall be provided prior to any change of the designated manager conducting business for the massage therapy clinic as provided in Section 16. The licensee shall, not less than 10 business days before such change is to take effect, give the Village Clerk written notice of such change. The notice shall include any information concerning the new manager which is required in Section 16.04 herein.

16.07 Limitation on Issuance and Renewal of License.

No massage therapy clinic license shall be issued or renewed under the following circumstances:

1. To an applicant who has been convicted of the following offenses:
 - (a) Any offense involving sexual misconduct with children or sex offenses as defined in 720 ILCS 5/11-6 *et seq.*, as amended; or
 - (b) A felony based upon conduct or involvement in such business or activity or related or similar business or activity, within the past 10 years; or
 - (c) A felony unrelated to conduct or involvement in such business or activity or related to similar business or activity, but which felony involved the use of a deadly weapon, violations of the Cannabis Control Act (720 ILCS 550/1 *et seq.*) or violence against another person, including rape, within the past 10 years; or
 - (d) A misdemeanor or licensing ordinance violation, based upon conduct or involvement in such business or activity or related or similar business or activity, within the past 10 years.
2. To an applicant whose license issued under this Chapter 16 has been revoked for cause.
3. To an applicant who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.
4. To an applicant under the age of 18 years of age.
5. To an applicant where grounds for revocation exist as provided under Section 16.

6. In addition to the provisions stated hereinabove, no massage therapy clinic license shall be issued or renewed under the following circumstances:
 - (a) To a partnership, if any general partner thereof, or any limited partner owning more than 20 percent of the aggregate limited partner interest in such partnership, would not be eligible to receive a license hereunder.
 - (b) To a corporation, if any officer or director, or any stockholder or stockholders owning in aggregate more than 20 percent of the stock of such corporation, would not be eligible to receive a license hereunder.
 - (c) To a corporation unless it is incorporated in Illinois, or unless it is a foreign corporation which is qualified under the Business Corporation Act of 1983 (806 ILCS 5/1.01 *et seq.*, as amended) to transact business in Illinois.
 - (d) To any applicant whose place of business is conducted by a manager unless the manager possesses the same qualifications required by the licensee.
 - (e) To any applicant who is not a beneficial owner of the business to be operated by the licensee.
7. To an applicant who is not a United States citizen or has status as a permanent resident alien or a valid work permit.

16.08 Fees.

The fee for a massage therapy clinic license required by Section 16.04 shall be \$50.00 per year. The \$50.00 application fee shall be considered the first year license fee.

16.09 Expiration of License; Renewal.

- A. Each license shall expire on April 30th and may be renewed only by making application as provided in Section 16.04 herein. Provided, in lieu of submittal, an applicant may, on forms provided by the Village, certify that the information previously provided remains true and valid. This renewal application shall be processed as provided in Section 16.05. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected. Renewal applications for massage therapy clinic licenses shall be obtained from the Village Clerk's office.
- B. When the Village President denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. Provided, if

subsequent to denial the Village Clerk finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license.

16.10 Massage Therapy Clinic Facilities.

No license or renewal thereof shall be issued to conduct a massage therapy clinic unless an inspection, conducted by the Village Clerk, or his designee, confirms that the clinic complies with the following minimum requirements. Renewal of a license may require reinspections by the Village Clerk or his designee.

1. Hot and cold running water shall be provided.
2. Adequate private dressing and toilet facilities shall be provided for patrons.
3. All walls, ceilings, floors, steam rooms and other physical facilities shall be kept in good repair, and maintained in a clean and sanitary condition.
4. Clean and sanitary towels and linens shall be provided for each client receiving massage services. No common use of towels or linens shall be permitted.

16.11 Prohibited Acts and Conditions of Application.

- A. No employee or operator shall perform, offer or agree to perform any act which would require the touching of a patron's genital area.
- B. The sexual or genital areas of patrons must be covered by non-transparent towels, clothing, cloths or undergarments at all times while in a massage therapy clinic premises, except while said patrons are alone in a washroom, bathroom, shower or clothes-changing area, or except when said patron is receiving lymphatic drainage treatment from a massage therapist having a minimum of 20 hours of training in such treatment.
- C. It shall be unlawful for any person, knowingly, in a massage therapy clinic to place his or her hand upon, to touch with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital area of any other person.
- D. No person shall administer a therapeutic massage to a patron if the massage therapist has a skin fungus, skin infection, skin inflammation or skin eruption; unless a physician duly licensed by the State certifies in writing that such massage therapist may safely administer a massage and prescribing the condition thereof.
- E. No employee or operator shall administer a therapeutic massage to a patron exhibiting any skin fungus, skin infection, skin inflammation or skin eruption; unless a physician duly licensed by the State certifies in writing that such person may be safely massaged and prescribing the conditions thereof.

- F. It shall be unlawful for any person to advertise themselves as a massage therapist without having a valid massage therapist license as defined in this Chapter 16.
- G. Any license issued under this Chapter 16 shall be displayed in a conspicuous location within the customer area of a licensed clinic. Massage therapists shall wear or otherwise display in a conspicuous location within the customer area their State massage therapy license at all times when they are performing, or holding themselves out as available to provide any therapeutic massage. In lieu of this display requirement, when therapeutic massage services are provided at the patron's location, the State massage therapy license shall be presented to the customer before such services commence.
- H. At all times during the hours of operation of a massage therapy clinic there shall be present a manager or other employee of the licensee who shall not be less than 18 years of age.
- I. No bathroom, bath, shower and/or clothes-changing area may be occupied by more than one person at any time. No massage therapist, massage therapy clinic owners, managers, employees and/or agents may be in any sauna or whirlpool while a patron is in same.
- J. No massage therapy clinic licensee shall employ as a massage therapist any person unless said person has a valid State massage therapy license.
- K. It shall be unlawful for any person who holds a license to operate a massage therapy clinic within the Village to fail to comply with the conditions and regulations set forth in this section or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises.
- L. It shall be unlawful for any person, association, firm or corporation licensed as provided in this Chapter 16 to operate under any name or conduct business under any designation not specified in such license.
- M. It shall be unlawful for any person, corporation, firm or association licensed under this Chapter 16 to provide massage therapy services between the hours of 9:00 pm and 7:00 am.
- N. A licensee shall have the premises supervised at all times when open for business. At least one person who is a State licensed massage therapist shall be on the licensed premises at all times while the establishment is open. The licensee shall personally service the business, or shall delegate such supervisory responsibility to a manager whose name is listed on the Village license and shall not violate, or permit others to violate, any application provisions of this Chapter 16. The violation of any provision of this Chapter 16 by any agent or employee of the licensee shall constitute a violation by the licensee.

- O. Employee Dress Code: All employees, including massage therapists, shall be clean and wear clean, nontransparent outer garments, covering at least the entire torso and the sexual and genital areas as defined herein.
- P. Separate License for Each Premises: Licenses shall apply only to the premises described in the application, and in the license issued thereon, and only one location shall be so described in each license.
- Q. Minors Prohibited: No person under the age of 18 shall be permitted to come or remain in the area where the massage activity is taking place on the licensed premises unless accompanied by a parent or guardian.
- R. Alcoholic Beverages Prohibited: No person shall sell, give, dispense, provide, keep or consume, or cause to be sold, given, dispensed, provided, kept or consumed, any alcoholic beverage on the licensed premises.

16.12 Premises Restrictions.

- A. No massage therapy clinic shall be located on any premises for which a license to sell alcoholic liquor has been issued.
- B. The massage therapy clinic shall be in compliance with applicable codes and ordinances of the Village and McHenry County, including, but not limited to, zoning, building, fire and life safety codes.
- C. When any license has been revoked for cause, no license shall be granted to any person for the period of one year thereafter for the conduct of a massage therapy clinic in the premises described in the revoked license.

16.13 Notice of Revocation, Suspension, or Refusal of a License.

No license shall be revoked, suspended or refused until the licensee has received due notice. Said notice shall be served upon the licensee by delivering the same personally or by leaving such notice at the place of business or residence of the licensee in the custody of a person 18 years of age or older. In the event the licensee cannot be found, and the service of such notice cannot be otherwise made in the manner herein provided, a copy of such notice shall be sent by certified mail, postage prepaid, addressed to the licensee at the licensee's place of business or residence at least 10 business days prior to the date of such hearing.

16.14 Revocation or Suspension of a License.

The license of a massage therapy clinic may be revoked or suspended in addition to the fines provided for in Section 16 herein, upon one or more of the following grounds:

1. The licensee has committed an act(s) of fraud or deceit in the application for license, or renewal thereof, submitted to the Village Clerk.
2. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another massage therapist of a like or different name.
3. The licensee has committed an act of fraudulent, false, misleading or deceptive advertising, or prescribing medicines, drugs or practices of any other licensed profession without legal authority therefore.
4. The licensee has committed an act(s) of prostitution, sexual offense or trafficking in controlled substances after the date of issuance of a massage therapy clinic or of a massage therapist license.
5. The licensee is found to be in violation of any section of this Chapter 16.
6. The licensee permits acts of prostitution or solicitations for acts of prostitution to be performed within the premises or elsewhere or permits any procedure during the performance of services within or off the premises that are performed for the purpose of sexual arousal or gratification of any patron, or should reasonably be expected to cause such result, or permits the use or trafficking of controlled substances or cannabis on the premises, or the commission of any unlawful act on the premises.
7. The licensee performs an act of prostitution or other lewd conduct within the premises or outside the premises or solicits an act of prostitution or other lewd conduct on or off the premises or performs services within or outside the premises in such manner for the purpose of sexual arousal or gratification of a patron, or should reasonably be expected to cause such result, or the licensee uses or is trafficking in controlled substances or cannabis.
8. The licensee has violated or is not in compliance with Section 16.11 herein and the license has been suspended within the preceding 24 months.
9. A licensee knowingly conducted massage activities in the Village during a period of time when the licensee's license was suspended.
10. Within a 24-month period, a person or persons committed an offense as listed in Section 16.07, which substantially occurred in or on a licensed premises, and for which a conviction has been obtained, and the person or persons were employees of the licensee at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

16.15 Appeal.

- A. Any applicant or licensee who receives a notice of denial, revocation or suspension may file an appeal with the Village Board as provided herein. Such appeal shall be filed with the Village Clerk in writing no later than 30 days following receipt of the notice, and shall include a response to the Village President. Such response shall include a brief statement addressing the substantive deficiencies cited in the Village President notice and shall set forth the basis for why the license should not be denied, revoked or suspended. If an appeal is filed of an order of the Village President suspending or revoking a license, such suspension or revocation shall be stayed pending final order of the President as provided in this Section 16.15.

- B. The Village Board shall schedule an informal public hearing no later than 10 business days following receipt of such appeal. The purpose of the hearing will be to offer the applicant or licensee an opportunity to show cause why the application should not be denied, or why the license should not be suspended or revoked. A record shall be made of the informal public hearing and documents may be submitted and/or testimony given, either in person or through sworn affidavit. This record may be made by electronic recording. The President shall have the power to administer oaths and to continue the hearing from time to time to permit the applicant to provide additional information.

The President may designate a hearing officer to schedule, convene and conduct the public hearing. In such case, the hearing officer shall have the same powers as the President to administer oaths and continue the hearing from time to time to permit the applicant to provide additional information. Where such designation has been made, the hearing officer shall submit proposed findings and recommendations to the President within 30 days of the close of the hearing.

- C. Within 30 days after the close of the hearing set forth in Section 16.15-B herein, the Village Board shall make written findings of fact and issue an appropriate order. Within five business days a copy of such order shall be served upon the applicant or licensee. If the President determines that the license should be revoked or suspended, the suspension or revocation shall take effect immediately upon receipt unless otherwise specified.

- D. The decision of the Village Board provided in Section 16.15-C herein shall be the final administrative action of the Village with respect to the license or application, and shall be subject to the immediate appeal by the licensee or applicant to the circuit court. Such appeal to the circuit court shall be filed not later than 30 days following the receipt of the Board's findings and order. Failure to file such appeal as provided herein shall render the Board's decision final.

16.16 Penalty for Violation.

Any person, corporation, firm or partnership found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter 16 shall be punished by a fine of not less than \$200.00 nor more than \$1,000.00 for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. In addition to any penalty, a licensee violating any provision of this Chapter 16 may be subject to having the license revoked, suspended or not renewed.