

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda


 X Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott R. Niehaus, Village Manager

DATE: September 23, 2014 (B of T) Date: October 2, 2014

TITLE: Code Amendments to Chapter 122 of the Village Code - Massage Establishments

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration an ordinance approving text amendments to the Lombard Village Code of Ordinances Title XI, Chapter 122 of the Lombard Village Code pertaining to massage establishment regulations. (DISTRICTS – ALL)

Staff recommends approval of the amendments to Chapter 122 of Village code pertaining to massage establishments.

Fiscal Impact/Funding Source:

Review (as necessary):
Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.

MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development ~~WJH~~

DATE: October 2, 2014

SUBJECT: Code Amendments to Chapter 122 of the Village Code – Massage Establishments

The Village has received an inquiry from an existing establishment relative to the existing fees that massage establishments are charged by the Village for their annual renewal. Current code requires a \$250 annual renewal fee for such establishments, which equals the initial application fee for such establishments.

In meeting with the applicant, review of the existing code provisions and completing a code review of nearby municipalities, staff finds that the existing code for renewals could be reduced. Additionally, since 2004 State Statutes now only allows municipalities to regulate the business establishment and not license individual masseuses.

Attached for Village Board consideration is a draft Ordinance that comprehensively reviews the full provisions of Chapter 122. Key amendments included within the Ordinance are:

- A reduction in the renewal rate from \$250 to \$100;
- Amendments designating the administrative role and responsibility of the Chapter to the Village Manager's office from the finance department (this practice had been in place since 2007);
- Inclusion of the Community Development Department and Director, who has overseen the Building Division since 2009, in addition to the Fire Department, to oversee selected inspection activities;
- Edits to reflect the current operations associated with such reviews and approvals;
- An amendment to the penalty provisions so as to not raise the legal standard needed prove a violation; and
- Village Counsel edits for clarity.

ACTION REQUESTED

Please place this item on the October 2, 2014 Village Board meeting for consideration. Staff recommends approval of the amendments to Chapter 122 of Village code pertaining to massage establishments.

ORDINANCE _____

**AN ORDINANCE APPROVING TEXT AMENDMENTS
TO THE LOMBARD VILLAGE CODE OF ORDINANCES
TITLE XI, CHAPTER 122
OF THE LOMBARD VILLAGE CODE**

Massage Establishment Regulations

WHEREAS, the Village of Lombard maintains a Code of Ordinances which is found in Title XI, Chapter 122 of the Lombard Code; and,

WHEREAS, the Board of Trustees deem it reasonable to periodically review said Code of Ordinances and make necessary changes; and,

WHEREAS, the Board of Trustees finds that the provisions set forth within Chapter 122 be amended to reflect changes in the administrative processes pertaining to massage establishments; and

WHEREAS, the Board of Trustees also finds that the provisions set forth within Chapter 122 be amended to reduce the inspection fees pertaining to massage establishment business licenses, based upon previous amendments within State Statutes that limit the ability of municipalities to regulate specific individuals performing such massage activities; and

WHEREAS, the Board of Trustees further finds that the provisions set forth within Chapter 122 be amended for clarity.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That Title XI, Chapter 122 of the Lombard Village Code is hereby amended to read in its entirety as follows:

ARTICLE I. GENERAL PROVISIONS

§ 122.01 Definitions.

§ 122.02 Permit required.

§ 122.03 Filing and fee.

§ 122.04 Review by village manager.

§ 122.01 Definitions.

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Any references to specific Village employees within Chapter 122 shall also include said employees' designees.

Licensed massage therapist. An individual who holds a valid, current, State of Illinois license as a massage therapist to practice massage/massage therapy as defined herein and who is thereby entitled to exclusive use of the terms "massage," "massage therapy," and "massage therapist" in advertising and printed promotional material.

Employee. Any person other than a masseur or masseuse who renders any service in connection with the operation of a massage business and receives compensation from the operator of the business or patrons.

Massage/massage therapy. A system of structured palpitation or movement of the soft tissue of the body. The system may include, but is not limited to, techniques such as effleurage or stroking and gliding, petrissage or kneading, tapotement or percussion, friction, vibration, compression, and stretching activities as they pertain to massage therapy. These techniques may be applied by a licensed massage therapist with or without the aid of lubricants, salt or herbal preparations, hydromassage, thermal massage, or a massage device that mimics or enhances the actions possible by human hands.

Massage establishment. Any establishment having a fixed place of business within the Village of Lombard where any person, firm, association, or corporation engages in, or carries on, or permits to be engaged in or carried on, massage or massage therapy as defined herein by one or more persons licensed by the State of Illinois as massage therapists.

Masseur or masseuse. Any person who, for any consideration whatsoever, engages in the practice of massage as herein defined.

Out-call massage service. Any business, the function of which is to engage in or carry on massages at a location designated by the customer or client rather than at a massage establishment.

Permittee. The operator of a massage establishment.

Person. Any individual, copartnership, firm, association, joint stock company, corporation, or combination of individuals of whatever form or character.

Sexual or genital area. Genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

('70 Code, § 6.40.010) (Ord. 2358, passed 1-24-80; Ord. 5551, passed 9/16/04)

§ 122.02 Permit required.

It shall be unlawful for any person to engage in, conduct, carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises in the village, the operating of a massage establishment as herein defined, without first having obtained a permit from the ~~village~~ Village.

('70 Code, § 6.40.020) (Ord. 2358, passed 1-24-80)

122.03 Filing and fee.

(A) Every applicant for a permit to maintain, operate, or conduct a massage establishment shall file an application ~~in duplicate under oath~~ with the ~~Finance Department~~ Village Manager's Office upon a form provided by ~~said Finance Department~~ the Village, and pay a nonrefundable filing fee of \$250.00 plus the actual cost of processing the fingerprints as required by subsection 122.10(B)(8) below, to the Village Treasurer, who shall issue a receipt which shall be attached to the application filed with the ~~Finance Department~~ Village Manager's Office. The renewal fee shall be ~~\$250.00~~ \$100.00, plus the actual cost of processing any additional fingerprints not previously processed by the Police Department.

(B) The ~~Finance Department~~ Village Manager's Office shall within five (5) days of the receipt of an application for a massage establishment license, ~~forward refer~~ copies of such application to the Community Development Department, the Fire Department, and the Police Department. These departments shall, within thirty (30) days after receipt of a copy of the application ~~from the Finance Department~~, ~~inspect the premises proposed to be operated as a massage establishment and/or~~ shall review and process the application information, as is appropriate relative to each respective department, and make written recommendations to the ~~Finance Department~~ Village Manager's Office concerning compliance with the codes, laws and ordinances that ~~they~~ said departments administer.

(C) Within thirty (30) days of receipt of the recommendations of the aforesaid departments, the ~~Finance Department~~ Village Manager's Office shall notify the applicant that ~~his~~ the application is granted, denied, or being held for further investigation. The period of such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, if any, the ~~Finance Department~~ Village Manager's Office shall advise the applicant in writing whether the application is granted or denied.

(D) Whenever an application is denied, or held for further investigation, the head of the department requesting said denial or further investigation shall advise the applicant in writing of the reasons for such action. An application may be denied if it is found:

(1) That the operation, as proposed by the applicant, if permitted, would not have complied with all applicable laws, including but not limited to the Building, Health, Planning, Housing, Zoning and Fire Codes of the ~~village~~Village; or

(2) That the applicant and/or any other person who will be directly or indirectly engaged in the management and operation of a massage establishment has been convicted of:

(a) A felony;

(b) An offense involving sexual misconduct with children;

(c) Prostitution, soliciting for a prostitute, pimping or other offense opposed to decency and morality.

The Police Chief, at his/her discretion, may authorize the issuance of a permit to any person convicted of any of the crimes in subsections (A)(2)(a), (b) and (c) above, if he finds that such conviction occurred at least five (5) years prior to the date of application, the applicant has had no subsequent convictions and the applicant has shown evidence of rehabilitation sufficient to warrant the public trust.

(E) The failure or refusal of the applicant to promptly give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding the said application, or his or her refusal to submit to or cooperate with any inspection required by this Chapter shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the ~~village~~Village.

(F) Every massage establishment permit issued pursuant to this Chapter shall terminate one year from the last day of the month in which it is issued, unless sooner suspended or revoked. Thereafter, renewals of said permit shall be for a period of one (1) year, unless sooner suspended or revoked. Notwithstanding the foregoing, a temporary permit may be issued, for less than a one (1) year period, pending the results of the processing of the fingerprints, at which time said non-temporary permit shall expire and a non-temporary permit shall either be issued or denied.

('70 Code, § 6.40.030) (Ord. 2358, passed 1-24-80, Ord. 3799, passed 12/16/93, Ord. 3838, passed 3/17/94; Ord. 4379, passed 10/16/97; Ord. 5628, passed 4/21/05)

§ 122.04 Review by Village Manager.

The decision of ~~the Finance Director, or any department head~~ with regard to the ~~issuance~~ denial, ~~suspension, or revocation~~ of any permit under this Chapter shall be reviewable by the Village Manager, ~~or his/her designee~~, upon the written request of the ~~party~~ applicant filed with the Village Manager within ten (10) days of such ~~denial~~ refusal, ~~revocation, or suspension~~. The Village Manager, ~~or his/her designee~~, shall review evidence previously submitted to the ~~village~~Village, the reports of the Finance Director ~~and/or the various department heads~~, and any

additional evidence presented with the written request for review. The decision of the Village Manager, ~~or his/her designee~~, upon such review shall be a final appealable order.

§ 122.10 Application.

(A) The application for a permit to operate a massage establishment shall set forth the exact nature of the massage to be administered, and the proposed place of business and facilities therefor.

(B) In addition to the foregoing, any applicant for a permit, including any partner or limited partner of a partnership applicant, and any officer or director of a corporate applicant and any stockholder holding more than ten percent of the stock of a corporate applicant, shall furnish the following information:

(1) Name and address.

(2) Written proof that the individual is at least 18 years of age.

(3) All residential addresses for the past three years.

(4) The applicant's height, weight, color of eyes and hair.

(5) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application.

(6) The massage or similar business license history of the applicant; 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 relocation.

(7) All criminal or ~~village~~Village ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.

(8) The fingerprints and photograph of the applicant.

(9) If the applicant is a corporation or limited liability company, or if a partner of a partnership applicant is a corporation or limited liability company, the name of the corporation or limited liability company shall be set forth exactly as shown in its articles of incorporation/establishing documents, and said corporation or limited liability company must be in good standing with the State of Illinois.

(10) The applicant's tax identification number.

(11) A statement as to whether the funding source for opening the establishment is the applicant, a state of federally regulated financial institution or some other person or entity. If the funding

source is other than the applicant or a state or federally regulated financial institution, the name and address of the funding source shall be supplied.

(12) A certificate of insurance evidencing professional (malpractice) liability insurance, covering all masseurs and masseuses that will be working for the Massage Establishment, an in amount of not less than \$500,000.00 per occurrence.

(C) The application for a permit to operate a massage establishment shall state the name of all of the licensed massage therapists who are employed to provide massage or massage therapy at the massage establishment. Said application shall be accompanied by copies of the licenses issued to said massage therapists.

('70 Code, § 6.40.040) (Ord. 2358, passed 1-24-80, Ord. 3799, passed 12-16-93, Ord. 4379, passed 10/16/97; Ord. 5551, passed 9/16/04)

§ 122.11 Issuance.

Upon receipt of favorable recommendations from all departments reviewing a massage establishment application, the ~~Finance Department~~Village Manager's Office shall issue a permit to maintain a massage establishment.

('70 Code, § 6.40.050) (Ord. 2358, passed 1-24-80, Ord. 3838, passed 3/17/94)

§ 122.12 Revocation or suspension.

(A) Any permit issued for a massage establishment may be revoked or suspended by the Village Manager ~~Finance Director or his/her designee~~ after a hearing for good cause or in any case where any of the provisions of this Chapter are violated or any employee of the permittee, including a masseur or masseuse, is engaged in any conduct at permittee's place of business which violates any of the provisions of this Chapter or any state law which provides for imprisonment, and permittee has actual or constructive knowledge of such violations or the permittee should have actual or constructive knowledge by due diligence, or where any applicant has made a false statement on an application for a permit under this Chapter or in any case where the permittee or licensee refuses to permit any duly authorized police officer or ~~health~~inspector of the ~~village~~Village and/or the county to inspect the premises or the operations therein. Such permit may also be revoked or suspended by the Village Manager ~~Finance Director or his/her designee~~, after hearing upon the recommendations of the Community Development Director and/or Fire Chief that such business is being managed, conducted, or maintained without regard for the public health or health of patrons or customers or without due regard to proper sanitation or hygiene.

(B) Any violation of this Chapter by any employee of the permittee including a masseur or masseuse, shall be cause for suspension of the permit for not more than thirty (30) days in the first instance. Any subsequent violation of this Chapter by any employee of the permittee, including the masseur or masseuse, shall be cause for suspension or revocation of the permit.

(C) The ~~Village Manager Finance Director or his/her designee~~, before revoking or suspending any permit, shall give the permittee at least ten (10) days' written notice of the charges against ~~him or her~~ the permittee and the opportunity for a ~~public~~ hearing before the ~~Village Manager Finance Director or his/her designee~~, at which time the permittee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

122.30 Necessary facilities.

(A) No massage establishment shall be issued a permit, nor be operated, established, or maintained in the ~~village~~Village unless an inspection by the Community Development Department and/or Fire Department reveals that the establishment complies with each of the following minimum requirements:

- (1) Construction of rooms used for toilets, tubs, steam baths, and showers shall be made waterproof with approved waterproof materials and shall be installed in accordance with the building code of the ~~village~~Village;
- (2) All massage tables, bathtubs, shower stalls, steam or bath areas, and floors shall have surfaces which may be readily disinfected;
- (3) Adequate bathing, dressing, and locker facilities shall be provided for the patrons to be served at any given time. In the event male and female patrons are to be served simultaneously, separate bathing, dressing, locker, and massage room facilities shall be provided;
- (4) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron;
- (5) 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;
- (6) Toilet facilities shall be provided in convenient locations. When employees and patrons of different sexes are on the premises at the same time separate toilet facilities shall be provided for each sex. A single water closet per sex shall be provided for each 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. Toilets shall be designated as to the sex accommodated therein;
- (7) Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels;
- (8) The premises shall be equipped with a service sink for custodial services;

(9) A hand wash basin shall be provided in each room designated for massages;

(10) A separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

(B) The Community Development Director and/or Fire Chief shall certify that the proposed massage establishment complies with all the requirements of this Chapter 122.30, and that the premises meets all applicable codes and ordinances of the ~~village~~Village relating to building, zoning, and fire safety. Said certification shall be filed with the ~~Finance Department~~Village Manager.

('70 Code, § 6.40.110) (Ord. 2358, passed 1-24-80; Ord. 3838, passed 3/17/94)

§ 122.31 Operating requirements.

All individuals in the Village of ~~Lombard~~ who are employed as a masseur or masseuse by a massage establishment or who otherwise administer massages or massage therapy as defined in this Chapter, except where exempt under State law, shall, at all times, have a current, valid massage therapist license from the State of Illinois, and all massage establishments within the Village of ~~Lombard~~ shall, comply with the following requirements:

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

(B) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.

(C) All employees, including masseurs and masseuses, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas, whose use is restricted to the massage establishment.

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

(E) The sexual or genital area of patrons must be covered by towels, cloths or undergarments when in the presence of an employee, masseur, or masseuse.

(F) It shall be unlawful for any person, knowingly, in a massage establishment, 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.

(G) No masseur or masseuse, employee, or operator shall perform, offer, or agree to perform any act which would require the touching of the patron's genital area.

(H) 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 and showers shall be thoroughly cleaned after each use. When carpeting is used on the floors, it shall be kept dry.

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

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

(K) No masseur or masseuse shall administer a 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, prescribing the conditions thereof.

(L) Each masseur and masseuse shall wash his or her hands in hot running water, using a proper soap or disinfectant before administering a massage to each patron.

(M) Within thirty (30) days of employment, massage establishments shall, for as long as they continue in business within the Village of Lombard provide the ~~village~~Village Manager's Office's ~~Finance Director~~ with copies of the licenses of all massage therapists employed subsequent to the date on which application was made for the massage establishment's first issued permit.

Every massage establishment shall be required to have a certified massage therapist on the licensed premises at all times while massages are being performed.

(N) The hours of operation for massage establishments shall be limited to between 6:00 a.m. and 9:00 p.m.

('70 Code, § 6.40.120) (Ord. 2358, passed 1-24-80, Ord. 3799, passed 12/16/93, Ord. 3838, passed 3/17/94; Ord. 5551, passed 9/16/04)

§ 122.32 Out-call registration and service.

Any masseuse or masseur who provides any of the services listed in Section 122.01 of this Chapter at any hotel or motel must first register his or her name and permit number with the owner, manager, or person in charge of the hotel or motel. No "out-call massage service" may be operated other than by a licensed masseur or masseuse. All massages performed by an "out-call massage service" must be performed in the manner prescribed in Section 122.21 of this Chapter where applicable.

('70 Code, § 6.40.130) (Ord. 2358, passed 1-24-80)

§ 122.33 Inspection.

The Police Department, Community Development Department and/or Fire Department shall from time to time, and at least ~~twice a year~~ annually, make an inspection of each massage establishment granted a permit under the provisions of this Chapter for the purposes of determining that the provisions of this Chapter are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any permittee to fail to allow such inspection officer access to the premises or to hinder such officer in any manner.

('70 Code, § 6.40.140) (Ord. 2358, passed 1-24-80)

§ 122.34 Employment age restrictions.

It shall be unlawful for any owner, proprietor, manager, or other person in charge of any massage establishment to employ any person who is not at least 18 years of age.

('70 Code, § 6.40.150) (Ord. 2358, passed 1-24-80)

§ 122.35 Reserved.

Editor's note — Ord. No. 5551, adopted September 16, 2004, repealed Section 122.35, which pertained to Identification Cards.

§ 122.36 Display and transfer of permit.

Every permittee shall display a valid permit in a conspicuous place within the massage establishment so that the same may be readily seen by patrons entering the premises. No permit for the operation of a massage establishment shall be transferable.

('70 Code, § 6.40.170) (Ord. 2358, passed 1-24-80, Ord. 3838, passed 3/17/94)

§ 122.37 Exemptions.

A massage establishment license shall not be required of establishments where persons engage in massage, massage therapy or similar practices but are not required to obtain a massage therapist license under Illinois law.

('70 Code, § 6.40.180) (Ord. 2358, passed 1-24-80, Ord. 3838, passed 3/17/94; Ord. 5551, passed 9/16/04)

§ 122.38 Public nuisance.

Any building used as a massage establishment in violation of this Chapter with the intentional knowing, reckless, or negligent permission of the owner thereof, or the agent of the owner

managing the building, together with all fixtures and other property used in violation of this Chapter are hereby declared to be a nuisance.

('70 Code, § 6.40.200) (Ord. 2358, passed 1-24-80)

§ 122.99 Penalty.

Any person who conducts a massage establishment without first obtaining a permit and paying a license fee to do so from the ~~village~~Village, or who shall violate any of the provisions of this Chapter, shall be guilty of a misdemeanor. Upon conviction, such person shall be punished by a fine of not to exceed \$750.00, ~~or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment.~~ Anyone who knowingly aids and abets one or more persons not authorized to use the professional term "massage therapist" or employs persons not authorized to use the title "massage therapist" in the course of employment or who uses the term "massage," "massage therapy" or "massage therapist" in advertising or printed promotional material without authorization to do so under Illinois law shall be prosecuted for violation of the Massage Licensing Act (225 ILCS 57/1 et seq.) for which the first offense is a Class "A" misdemeanor and a second and any subsequent offense is a Class 4 felony.

('70 Code, § 6.40.190) (Ord. 2358, passed 1-24-80, Ord. 4104, passed 12/7/95; Ord. 5551, passed 9/16/04)

SECTION 2: That this ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this ____ day of _____, 2014.

First reading waived by action of the Board of Trustees this ____ day of _____, 2014.

Passed on second reading this ____ day of _____, 2014.

Ayes: _____

Nays: _____

Absent: _____

Approved this ____ day of _____, 2014.

Keith T. Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Published in pamphlet from this _____ day of _____, 2014.

Sharon Kuderna, Village Clerk