



Legislation Text

File #: 20-198, **Version:** 3

ACTION REQUESTED:

Communication from the City Manager and Corporation Counsel with a Request to Consider ADOPTING an ORDINANCE Amending Chapter 18 of the CODE of the City of Peoria Pertaining to BODYWORK ESTABLISHMENTS.

BACKGROUND:

Until 2005, Chapter 18 of the City's municipal code regulated massage establishments/massage services. The city deleted Chapter 18 on January 18, 2005 as "changes in the state statute gives exclusive jurisdiction and power to regulate and license massage therapy to the state through its Department of Professional Regulation." The Massage Licensing Act specifically prohibited home-rule municipalities from regulating or licensing massage therapy.

Although the Act appeared to limit the City's authority regulate massage businesses, the Court held otherwise. The authority of a municipality to regulate massage establishments was upheld in *Kinghealth Spa Inc. v. Village of Downer's Grover* (2014 Ill.App.2d 130825). The issue in that case was whether a local licensing commission could revoke a massage parlors license. Interestingly, the Court relied on *Wes Ward Enterprise, Ltd. v. Andrews* (42 Ill.App.3d 458 (1976) where the court held that the **City of Peoria's** massage business ordinance was a reasonable exercise of the local government's police power. The court specifically noted the holding in *Wes Ward* that "the ordinance provisions prohibiting nudity and the touching of sexual and genital areas were obviously designed to proscribe such unlawful conduct and to prevent unscrupulous persons from permitting massage establishments to be used for purposes of prostitution in violation of the Criminal Code for a single ordinance violation."

The City cannot license individual massage therapists but can license the establishments they work within. The City exercised its rights to license massage establishments on April 24, 2018 with the adoption of Ordinance No. 17,571. The ordinance contains an in-depth administrative process licensing massage establishments. The ordinance also contains exemptions for various facilities licensed with the State of Illinois. For example, massages offered in physicians' offices, as part of an athletic training program, in a hospital or by a student enrolled in a recognized massage school do not need a City license. Cosmetologists and barbers were individually exempt if the massage was incidental to the services being provided (for example, a scalp massage as part of a shampoo). The actual salon or shop, however, was required to obtain a city license.

The Department of Financial and Professional Regulation, Division of Professional Regulation, accepts registrations under the Barber, Cosmetology, Esthetics, Hair Braiding and Nail Technology Act. (225 ILCS 410/3D-5). Each business that provides barbering, cosmetology, esthetics, hair braiding or nail technology services in Illinois must be registered as a salon or shop with the Illinois Department of Financial and Professional Regulation. All licensees must follow the sanitary standards appropriate to their practice as outlined in Section 1175.115 of the rules.

The original proposed amendment to Chapter 18 sought to include an exemption from local licensing of massage establishments if the salon/shop is registered with the Illinois Department of Professional Regulation through 225 ILCS 410. Staff recommended against the original proposed amendment as establishments could obtain the Registration with minimal barber or cosmetology services being offered within their facility.

Staff has altered the proposed amendment to allow or an exemption for businesses that have a Salon/Shop registration with the IDFPR if they can also show proof of ten (10) full-time employees. If the business' full-time employees is below 10 but that is due to the pandemic or another act of god, it can still be grated Business owners will request this exemption on an annual basis and must show proof of their full-time employees. Recognizing that not all businesses will have a standard procedure for accounting purposes, the businesses will be able to use whatever means or methods of proving employment are available to them, as long as the City finds the documentation or process sufficient.

FINANCIAL IMPACT: Reduction in licensing fees paid by salons/shops to obtain a bodyworks license.

NEIGHBORHOOD CONCERNS: None.

IMPACT IF APPROVED: Salons/shops with a state registration will not need a city license to provide massage.

IMPACT IF DENIED: Salons/shops with a state registration will continue to need a city license to provide massage.

ALTERNATIVES: N/A

EEO CERTIFICATION NUMBER: N/A

WHICH OF THE GOALS IDENTIFIED IN THE COUNCIL'S 2017 - 2032 STRATEGIC PLAN DOES THIS RECOMMENDATION ADVANCE?

1. Safe Peoria

WHICH CRITICAL SUCCESS FACTOR(S) FROM THE COMPREHENSIVE PLAN DOES THIS RECOMMENDATION IMPLEMENT?

1. Keep taxes and fees competitive.

DEPARTMENT: Legal