



Legislation Text

File #: 18-018, **Version:** 1

ACTION REQUESTED:

Communication from the City Manager and Corporation Counsel with a Request to ADOPT 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 1/18/05 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 prohibits home-rule municipalities from regulating or licensing massage therapy.

The Massage Licensing Act specifically preempted home rule authority. See 225 ILCS 57/55:

Sec. 55. Exclusive jurisdiction. The regulation and licensing of massage therapy is an exclusive power and function of the State. A home rule unit may not regulate or license massage therapists. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

Although this Act would seem to prevent the City from regulating massage businesses, the court has 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.

Chicago, Champaign, Joliet and Rock Island (among others) all have "massage establishment" licenses. Generally, they require the massage therapist to be licensed with the state, have some operational requirements (prices lists, restrooms), record maintenance (clients, fees) and make them subject to code inspections. Adoption of the massage establishment ordinances have all been in an effort to "combat human trafficking and prostitution."

While the City has limited authority to license individual massage therapists, they have authority to license massage establishments. The attached ordinance is an in-depth administrative process that will regulate and license massage establishments. Notably, this version has a definition broader than just massage and will regulate all establishments that perform bodywork. This broader definition will regulate establishments that are exempt from State licensing requirements. The State-exempt facilities are most often associated with illicit activity, so regulation by the City will be a powerful tool to help combat prostitution and human trafficking.

The proposed massage ordinance has undergone several iterations after continued dialogue with local

massage therapists, the American Massage Therapy Association (AMTA), Associated Bodyworkers and Massage Professionals (ABMP) and the Federation of State Massage Therapy Boards (FSMTB) as well as the Center for Prevention of Abuse. This version of a Bodywork Establishment ordinance differs from the prior version of a Massage Establishment in several notable ways:

- This ordinance encompasses bodywork, which is a broader definition of massage. A bodywork establishment ordinance can help prevent illicit establishments from advertising themselves as a holistic practitioner or general health resource, which may have allowed them to avoid licensing altogether under the prior version. The broader definition of bodywork also encompasses the exemptions currently in the state licensing for massage therapists (i.e. Asian bodywork).
- As the reach of this ordinance is now broader, it is also specific as to exemptions. While some professions did not need to be exempted from the proposed massage ordinance, they now need to be exempt from bodywork as their services are encompassed in the bodywork definition.
- This version of the ordinance contains significantly more information on the required Application section. After working on beginning drafts of the application, it seemed prudent to list the information required in the ordinance. This seems a bit onerous on the applicant when its read in the ordinance, but when the applicant is filling in the application, it is not as burdensome as text version sounds.
- The fee is still a concern for massage therapists. There is also a concern about those individuals providing bodywork as a small part of a larger business. This version includes a “primary” and “secondary” license. The initial application fee for somebody primarily engaged in bodywork remains at \$250 but an establishment that has less than 50% of its business as bodywork will only have to pay a \$100 fee.
- Residency is now prohibited in the business establishment. This is geared toward prohibiting employees from living in the business but would not apply to buildings appropriately zoned for mixed-use residential and commercial.
- This version eliminates the need for a glass front in lieu of an open door policy (unless it is a single room where an open door policy would not be possible).
- There is an increase in the fines assessed for penalty.

FINANCIAL IMPACT: N/A

NEIGHBORHOOD CONCERNS: None

IMPACT IF APPROVED: The City will regulate massage establishments.

IMPACT IF DENIED: The City will not regulate massage establishments.

ALTERNATIVES: N/A

EEO CERTIFICATION NUMBER: N/A

WHICH OF THE GOALS IDENTIFIED IN THE COUNCIL’S 2014 - 2029 STRATEGIC PLAN DOES THIS RECOMMENDATION ADVANCE?

1. Attractive Neighborhoods with Character: Safe and Livable

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

1. Reinvest in neighborhoods.

DEPARTMENT: Legal