



LEGAL SERVICES DEPARTMENT

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TO: Safety and Licensing Committee

CC: Ald. Coenen

FROM: Darrin Glad, Assistant City Attorney

DATE: December 9, 2019

RE: Resolution #6-R-19 Update

I. History of Resolution #6-R-19

Resolution #6-R-19 was submitted by Ald. Coenen requesting that the City of Appleton explore creating an ordinance requiring massage business establishments to be licensed by the City with a free/low fee license and allow City employees to enter the business anytime during business hours to perform inspections. This Resolution was passed by Common Council on September 4, 2019.

II. Steps Taken

Prior to the Resolution being passed by Council, Lt. Miller and Assistant City Attorney Glad met several times to discuss ways in which the City could effectively address repeated law enforcement issues that were consistently occurring in unlicensed massage business establishments.

After passage of the Resolution, Assistant City Attorney Glad reached out to several municipalities that regulate massage establishments to obtain information regarding enforcement of their particular regulations. Two municipal attorneys relayed that their larger-sized municipalities do not take enforcement action against the unlicensed massage business establishments despite their respective municipal codes requiring local licensing. A third municipality did not respond to the inquiry.

Assistant City Attorney Glad continued discussions with various staff at APD including Chief Thomas, Lt. Miller, Lt. Lewis, and Sgt. Ryan. Discussions centered on continued issues with massage business establishments, this resolution, and the pending State legislation related to massage and bodywork therapy. Simultaneous with City discussions, there was legislation pending at the State level addressing similar concerns. Throughout these discussions with City staff there was a consensus that if the State legislation were to pass, then the need for local regulation by licensing the massage business establishments seemed less critical and/or unnecessary. Staff closely monitored the legislation and on November 21, 2019, Governor Evers signed into law 2019 Act 41 which both criminalizes any violation of Chapter 460 of the

Wisconsin State Statutes, which regulates massage and bodywork therapy, and allows municipalities to enact ordinances prohibiting an individual from violating the State licensing requirements. A copy of Chapter 460 as modified by 2019 Act 41 is attached.

With the passage of this law, staff believes that the time is right to create an ordinance under this newly-adopted state statute as well as continue to monitor the effectiveness of enforcement actions taken under the new ordinance and current laws, including the laws available under our nuisance abatement. Staff will also continue to explore creating an ordinance requiring massage business establishments to be licensed by the City in the event that the new State legislation does not empower the City with enough enforcement action to be effective.

III. Proposed Language

The recommended modifications to Appleton's Municipal Code are to create a new section under Chapter 10, Miscellaneous Offenses that would read as follows:

Sec. 10-50. Massage Therapy and Bodywork Therapy

- (a) For purposes of this section, the definitions set forth in W.S.A. § 460.01 are hereby adopted and incorporated as part of this section.
- (b) No person may violate the prohibitions under W.S.A. § 460.02 unless the person is licensed as required under W.S.A. Chapter 460 as required under W.S.A. § 460.02.
- (c) No person may employ or contract for the services of an individual to provide massage therapy or bodywork therapy who is required to be licensed under W.S.A. § 460.02 unless the individual is licensed under W.S.A. Chapter 460.
- (d) **Penalties.** Any person who shall violate any provision of this section may be subject to a forfeiture of no more than one hundred dollars (\$100) for the first offense and no more than two hundred fifty dollars (\$250) for the second and subsequent offenses. Each day that a violation occurs shall be considered a separate offense.

IV. Effects of Changes Set Forth Above

Staff from the Legal Services Department and the Police Department recommend adopting the language set forth above for several reasons. First, the new state law criminalizes violations of Chapter 460 and any rule promulgated under that Chapter. This will allow law enforcement to enter into business establishments in order to ensure compliance with the entirety of that Chapter. Also by criminalizing this Chapter, law enforcement is now empowered with other investigatory tools and will have the ability to investigate law violations much easier than before. Prior to the new State legislation, regulation through a local licensing system was viewed as a promising way to regulate this area; however, the new State legislation diminishes the need to create a local licensing structure because the new laws remove previous barriers to regulate this area. Additionally, as referenced earlier, repeat violations could result in nuisance abatement actions which will add to the enforcement options available.

Finally, it is the intent of City staff to continue to monitor the effectiveness of the new State law and the new ordinance, if passed. If these new measures prove to fall short, then staff will explore creating an ordinance to regulate massage business establishments through a low fee license.

V. Conclusion

Staff recommends approving the proposed ordinance language set forth within this memo.

Thank you for your consideration. As always, if you have any questions please do not hesitate to contact Assistant City Attorney Glad.

City Law A19-0939

CHAPTER 460

MASSAGE THERAPY AND BODYWORK THERAPY

460.01	Definitions.		
460.02	License required.		instructor requirements.
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460.04	Duties of affiliated credentialing board.	460.11	Practice requirements.
460.05	Licensure of massage therapists and bodywork therapists.	460.12	Duty to make reports.
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460.07	Display of certificate; expiration and renewal.	460.14	Disciplinary proceedings and actions.
460.08	Temporary license.	460.145	Employment of unlicensed persons.
460.09	Reciprocal license.	460.15	Penalty.
460.095	Massage therapy and bodywork therapy school, training program, and	460.17	Local regulation.

Cross-reference: See also chs. [MTBT 1](#), [2](#), [3](#), [4](#), and [5](#), Wis. adm. code.

460.01 Definitions.

In this chapter:

(1g) “Adjunctive therapy” means any of the following:

- (a) The use of a device that simulates or enhances a manual action.
- (b) The application of water, lubricants, or other non-prescription topical agents to the skin.
- (c) The application of heat or cold to the skin in the absence of an electromagnetic device.

(1r) “Affiliated credentialing board” means the massage therapy and bodywork therapy affiliated credentialing board.

(2m) “License holder” means a person granted a license under this chapter.

(3) “Manual action” includes holding, positioning, rocking, kneading, compressing, decompressing, gliding, or percussing the soft tissue of the human body or applying a passive range of motion to the human body without joint mobilization or manipulation.

(4) “Massage therapy” or “bodywork therapy” means the science and healing art that uses manual actions and adjunctive therapies to palpate and manipulate the soft tissue of the human body in order to improve circulation, reduce tension, relieve soft tissue pain, or increase flexibility. “Massage therapy” or “bodywork therapy” includes determining whether manual actions and adjunctive therapies are appropriate or contraindicated, or whether a referral to another health care practitioner is appropriate. “Massage therapy” or “bodywork therapy” does not include making a medical, physical therapy, or chiropractic diagnosis.

(6) “Sexual contact” has the meaning given in s. [939.22 \(34\)](#).

(7) “Sexual intercourse” has the meaning given in s. [948.01 \(7\) \(a\)](#).

History: 2001 a. 74; 2009 a. 12, 355; 2017 a. 364.

460.02 License required. Except as provided in s. [460.03](#), no person may provide massage therapy or bodywork therapy, designate himself or herself as a massage therapist or bodywork therapist or masseur or masseuse, or use or assume the title “massage therapist and bodywork therapist” or “massage therapist” or “bodywork therapist” or “masseur” or “masseuse” or any title that includes “massage therapist,” “bodywork therapist,” or “bodyworker,” or append to the person’s name the letters “M.T.,” “R.M.T.,” “L.M.T.,” “C.M.T.,” “B.T.,” “B.W.,” “L.B.W.,” “R.B.W.,” or “C.B.W.,” or use any other title or designation that represents or may tend to represent that he or she is licensed under this chapter, unless the person is licensed under this chapter.

History: 2001 a. 74; 2009 a. 355.

460.03 Applicability. A license under this chapter is not required for any of the following:

(1) A person holding a license, permit, registration, or certification granted by this state or the federal government who engages in a practice of massage therapy or bodywork therapy within the scope of his or her license, permit, registration, or certification and who does not imply that he or she is licensed under this chapter. A person who is exempt from licensure under this subsection may use the terms “bodywork,” “bodyworker,” and “bodywork therapy” to identify his or her practice.

(2) A person who is authorized to practice massage therapy or bodywork therapy in another state or country and is providing a consultation to or demonstration with a license holder. A person who is exempt from licensure under this subsection may use the terms “bodywork,” “bodyworker,” and “bodywork therapy” to identify his or her practice.

(2m) (a) A person who does any of the following and who satisfies the requirements of par. (b):

1. Uses touch, words, and directed movement to deepen a client’s awareness of his or her existing patterns of movement and to suggest to the client new patterns of movement.
2. Uses touch to affect the energy systems of the human body.
3. Uses touch and education to effect change in the structure of the body while engaged in the practice of structural integration.

(b) The person is recognized by or meets the established standards of either a professional organization or credentialing association that recognizes a person in a practice after that person demonstrates an adequate level of training and competency and adherence to ethical standards.

(c) A person who is exempt from licensure under this subsection may use the terms “bodywork,” “bodyworker,” and “bodywork therapy” to identify his or her practice.

(3) A person who manipulates only the soft tissues of the hands, feet, or ears of the human body, provided that the services are not represented or implied to be massage therapy or bodywork therapy.

History: 2001 a. 74; 2009 a. 355; 2011 a. 260 s. 80.

Cross-reference: See also chs. [MTBT 1](#), [2](#), [3](#), [4](#), and [5](#) Wis. adm. code.

460.04 Duties of affiliated credentialing board.

(1m) The affiliated credentialing board shall prepare an examination on state laws and administrative rules governing massage therapy and bodywork therapy.

(2) The affiliated credentialing board shall promulgate rules that establish all of the following:

(a) Standards that govern the professional conduct of license holders in practicing massage therapy or bodywork therapy. The standards shall prohibit a license holder from having sexual contact or sexual intercourse with a client.

(b) Criteria for approving a training program for purposes of s. [460.05 \(1\) \(e\) 1](#). Rules promulgated under this paragraph shall

require the training program to meet the requirements under s. 460.095 and to consist of at least 600 classroom hours.

(c) Requirements and procedures for obtaining the informed consent of a client under s. 460.11 (1) and for making a report required under s. 460.12 (1).

(d) A definition of “sexually oriented business” for purposes of s. 460.11 (3).

(e) A requirement that an applicant for a license under this chapter submit evidence satisfactory to the affiliated credentialing board that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

(f) Requirements to be satisfied by a person seeking a temporary license under s. 460.08. The rules promulgated under this subsection shall require the person to be a graduate of a massage therapy or bodywork therapy school or program and may require the holder of a temporary license to make disclosures to clients and to practice under the supervision of a massage therapist or bodywork therapist licensed under this chapter.

(g) A requirement that an applicant for a license under this chapter pass an examination on state laws and administrative rules governing massage therapy and bodywork therapy.

History: 2001 a. 74; 2007 a. 104; 2009 a. 355.

Cross-reference: See also chs. MTBT 1, 2, 3, 4, and 5, Wis. adm. code.

460.05 Licensure of massage therapists and bodywork therapists. (1) The affiliated credentialing board shall grant a license as a massage therapist or bodywork therapist to a person who satisfies all of the following:

(a) The person is 18 years of age or older.

(b) The person has graduated from high school or attained high school graduation equivalency as determined by the department of public instruction under s. 115.29 (4).

(c) The person submits an application for the license to the affiliated credentialing board on a form provided by the affiliated credentialing board.

(d) The person pays the fee specified in s. 440.05 (1).

(e) Except as provided in sub. (2), the person submits evidence satisfactory to the affiliated credentialing board that he or she has done all of the following:

1. Graduated from a school of massage therapy or bodywork therapy approved by the department under s. 440.52 that meets the requirements under s. 460.095 or completed a training program approved by the affiliated credentialing board under the rules promulgated under s. 460.04 (2) (b).

2. Completed at least 6 classroom hours in the laws of this state and rules of the affiliated credentialing board relating to the practice of massage therapy or bodywork therapy in a course of instruction approved by the affiliated credentialing board.

(f) The person passes the examinations under s. 460.06.

(g) The person submits evidence satisfactory to the affiliated credentialing board that he or she has in effect malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(h) The person has not been convicted of any of the following:

1. An offense under s. 940.22, 940.225, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.081, 948.085, 948.09, 948.095, or 948.10.

2. An offense under federal law or a law of any other state that is comparable to an offense under subd. 1.

(i) The person submits evidence satisfactory to the department that he or she has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

(2) The affiliated credentialing board may waive a requirement specified in sub. (1) (e) if a person establishes, to the satisfac-

tion of the affiliated credentialing board, that he or she has education, training, or other experience that is substantially equivalent to the requirement.

(4) The affiliated credentialing board may assign a unique license number to each person licensed under this chapter.

History: 2001 a. 74; 2005 a. 22, 25, 254, 277; 2007 a. 104; 2009 a. 355 ss. 21, 28 to 34; 2013 a. 362; 2017 a. 59, 128.

460.06 Examinations. The affiliated credentialing board may not grant a license under this chapter unless the applicant achieves a passing grade on the following examinations:

(1) A nationally administered, entry-level competency examination for therapeutic massage and bodywork therapy that meets generally accepted psychometric principles and standards or a substantially equivalent examination approved by the affiliated credentialing board.

(2) The examination on state laws and administrative rules governing massage therapy and bodywork therapy required under s. 460.04 (2) (g).

History: 2001 a. 74 s. 16; 2009 a. 355; 2013 a. 168 s. 21.

460.07 Display of certificate; expiration and renewal.

(1) Each person who is licensed under this chapter shall conspicuously display the license in the place of business where he or she practices massage therapy or bodywork therapy so that the license can easily be seen and read.

(2) Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include all of the following:

(a) The renewal fee determined by the department under s. 440.03 (9) (a).

(b) If applicable, proof of completion of continuing education under s. 460.10.

(c) Evidence satisfactory to the affiliated credentialing board that the applicant has in effect malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(d) Evidence satisfactory to the affiliated credentialing board that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38) to provide such instruction.

History: 2001 a. 74; 2007 a. 20, 104; 2009 a. 355.

460.08 Temporary license. The affiliated credentialing board may grant a temporary license for a period not to exceed 6 months to an applicant who satisfies the requirements established in the rules under s. 460.04 (2) (f). A temporary license may not be renewed.

History: 2009 a. 355.

460.09 Reciprocal license. Upon application and payment of the fee specified in s. 440.05 (2), the affiliated credentialing board shall grant a massage therapist or bodywork therapist license to a person who holds a similar license in another state or territory of the United States or another country if the affiliated credentialing board determines that the requirements for receiving the license in the other state, territory, or country are substantially equivalent to the requirements under s. 460.05.

History: 2001 a. 74; 2009 a. 355.

460.095 Massage therapy and bodywork therapy school, training program, and instructor requirements. Each massage therapy or bodywork therapy school located in this state and each massage therapy or bodywork therapy training program offered in this state shall do all of the following:

(1) Provide and require as a prerequisite to graduation completion of a course of instruction on state laws and regulations applicable to massage therapy and bodywork therapy.

(2) Administer, score, and require as a prerequisite to graduation, the examination required under s. 460.06 (2).

(3) Ensure that each instructor hired by the school or training program on or after December 1, 2010, to teach courses in anatomy, physiology, kinesiology, and pathology has at least one of the following:

(a) Professional training and 2 years of experience in a health-related field.

(b) Two years of post-secondary education and training.

(4) Ensure that each instructor hired by the school or training program on or after December 1, 2010, to teach courses in theory and the practice of massage therapy or bodywork therapy is licensed under this chapter and has at least one of the following:

(a) Two years experience as a practicing professional.

(b) Formal education and training as a massage therapy or bodywork therapy instructor.

History: 2009 a. 355.

460.10 Continuing education. (1) The affiliated credentialing board may promulgate rules establishing all of the following:

(a) Requirements and procedures for a license holder to complete continuing education programs or courses of study to qualify for renewal of his or her license. The rules promulgated under this paragraph may not require a license holder to complete more than 24 hours of continuing education programs or courses of study in order to qualify for renewal of his or her license.

(b) Qualifications applicable to providers of continuing education programs and courses required under par. (a).

(2) The affiliated credentialing board may waive all or part of any requirement established in rules promulgated under sub. (1) (a) if it determines that prolonged illness, disability, or other exceptional circumstances have prevented a license holder from completing the requirement.

History: 2001 a. 74; 2009 a. 355; 2011 a. 260.

460.11 Practice requirements. (1) A license holder may not practice massage therapy or bodywork therapy on a client unless the license holder first obtains the informed consent of the client and has informed the client that he or she may withdraw the consent at any time.

(2) A license holder shall keep confidential any information that a client in confidence gives to the license holder and any other information that the license holder obtains about a client in the course of practicing massage therapy or bodywork therapy that a reasonable person in the client's position would want kept confidential, unless the information is otherwise required by law to be disclosed or the client specifically authorizes the disclosure of the information.

(3) A license holder may not, whether for compensation or not, practice massage therapy or bodywork therapy for a sexually oriented business, as defined by the affiliated credentialing board by rule.

History: 2001 a. 74; 2009 a. 355.

460.12 Duty to make reports. (1) A license holder shall submit a report to the affiliated credentialing board if he or she has reasonable cause to believe that another license holder has committed a crime relating to prostitution under ss. 944.30 to 944.34 or has had sexual contact or sexual intercourse with a client. If the report relates to sexual contact or sexual intercourse with a client, the report may not identify the client unless the client has provided written consent for disclosure of this information.

(2) The affiliated credentialing board may use a report made under sub. (1) as the basis for an investigation under s. 460.14 (1). If, after an investigation, the affiliated credentialing board has reasonable cause to believe that a license holder has committed a crime, the affiliated credentialing board shall report the belief to

the district attorney for the county in which the crime, in the opinion of the affiliated credentialing board, occurred.

(3) If, after an investigation, the affiliated credentialing board determines that a report submitted under sub. (1) is without merit, the affiliated credentialing board shall remove the report from the record of the license holder who is the subject of the report.

(4) All reports and records made from reports under sub. (1) and maintained by the affiliated credentialing board, the department, district attorneys, and other persons, officials, and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a client with whom a license holder is suspected of having sexual contact or sexual intercourse shall not be disclosed by persons who have received or have access to a report or record unless disclosure is consented to in writing by the client. The report of information under sub. (1) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the confidentiality of patient health care records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and records may be disclosed only to the affiliated credentialing board, the department, and the appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(5) (a) In this subsection, "violation" means a violation of any state or local law that is punishable by a forfeiture.

(b) A license holder shall submit a written report to the affiliated credentialing board if he or she is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, and if the circumstances of the felony, misdemeanor, or violation substantially relate to the practice of massage therapy or bodywork therapy. The report shall identify the date, place, and nature of the conviction or finding and shall be submitted within 30 days after the entry of the judgment of conviction or the judgment finding that he or she committed the violation. If the report is submitted by mail, the report is considered to be submitted on the date that it is mailed.

History: 2001 a. 74; 2009 a. 355.

460.13 Advertising. Except as provided in s. 460.03 (1) and (2), a license holder may not advertise that he or she practices massage therapy or bodywork therapy unless the advertisement includes a statement that the license holder is a "licensed massage therapist and bodywork therapist" or "licensed massage therapist" or "licensed bodywork therapist."

History: 2001 a. 74; 2009 a. 355; 2011 a. 260 s. 80.

460.14 Disciplinary proceedings and actions. (1) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board may make investigations and conduct hearings to determine whether a violation of this chapter or any rule promulgated under this chapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board may reprimand a license holder or deny, limit, suspend, or revoke a license under this chapter if it finds that the applicant or license holder has done any of the following:

(a) Made a material misstatement in an application for a license or for renewal of a license.

(b) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an offense the circumstances of which substantially relate to the practice of massage therapy or bodywork therapy.

(c) Advertised in a manner that is false, deceptive, or misleading.

(d) Advertised, practiced, or attempted to practice under another's name.

(e) Subject to ss. 111.321, 111.322, and 111.34, practiced massage therapy or bodywork therapy while his or her ability to practice was impaired by alcohol or other drugs.

(f) Intentionally made a false statement in a report submitted under s. 460.12 (1).

(g) Engaged in unprofessional conduct in violation of the standards established in rules promulgated under s. 460.04 (2) (a).

(h) Engaged in conduct while practicing massage therapy or bodywork therapy that jeopardizes the health, safety, or welfare of a client or that evidences a lack of knowledge of, inability to apply, or the negligent application of, principles or skills of massage therapy or bodywork therapy.

(j) Violated this chapter or any rule promulgated under this chapter.

(2m) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board shall revoke a license under this chapter if the license holder is convicted of any of the following:

(a) An offense under s. 940.22, 940.225, 944.15, 944.17, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.08, 948.081, 948.085, 948.09, 948.095, or 948.10.

(b) An offense under federal law or a law of any other state that is comparable to an offense under par. (a).

(3) The affiliated credentialing board may restore a license that has been suspended or revoked on such terms and conditions as the affiliated credentialing board may deem appropriate.

(4) The affiliated credentialing board may, in addition to or in lieu of a reprimand or revocation, limitation, suspension, or denial of a license, assess against a person who has done anything specified under sub. (2) (a) to (j) a forfeiture of not more than \$1,000 for each separate offense. Each day of continued violation constitutes a separate offense.

History: 2001 a. 74; 2005 a. 277; 2009 a. 355; 2013 a. 362; 2017 a. 128; 2019 a. 41.

460.145 Employment of unlicensed persons. No person may employ or contract for the services of an individual to provide massage therapy or bodywork therapy who is required to be

licensed under s. 460.02 unless the individual is licensed under this chapter.

History: 2019 a. 41.

460.15 Penalty. Any person who violates this chapter or any rule promulgated under this chapter may be fined not more than \$1,000 for each violation or imprisoned for not more than 90 days, or both.

History: 2001 a. 74; 2009 a. 355; 2019 a. 41.

460.17 Local regulation. (1) A city, village, town, or county may not enact an ordinance that regulates the practice of massage therapy or bodywork therapy by a person who is licensed by the affiliated credentialing board under this chapter. No provision of any ordinance enacted by a city, village, town, or county that is in effect before February 1, 1999, and that relates to the practice of massage therapy or bodywork therapy, may be enforced against a person who is licensed by the affiliated credentialing board under this chapter.

(2) (a) 1. A city, village, or town may enact and enforce an ordinance that prohibits an individual from violating the prohibitions under s. 460.02 unless the individual is licensed under this chapter as required under s. 460.02.

2. A city, village, or town may enact and enforce an ordinance that prohibits a person from employing or contracting for the services of an individual to provide massage therapy or bodywork therapy who is required to be licensed under s. 460.02 unless the individual is licensed under this chapter.

(b) Law enforcement personnel of a city, village, or town may issue citations for violations of a local ordinance described in par. (a), and the city, village, or town may impose forfeitures, not to exceed the amount specified in s. 460.14 (4), for violations of such an ordinance.

History: 2001 a. 74 s. 19; 2009 a. 355; 2019 a. 41.