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asst. Health  
officer, please  
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amc:hc*

ORDINANCE NO. 661

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 8 OF THE CODE OF THE CITY OF ABILENE, BY ADDING TO CHAPTER 8 THEREOF A NEW ARTICLE, TO BE KNOWN AS ARTICLE IV, PROVIDING FOR THE REGULATION OF THE BUSINESS OF MASSAGE ESTABLISHMENTS WITHIN THE CITY OF ABILENE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR PENALTY, AND PROVIDING FOR PASSAGE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: The Code of the City of Abilene is hereby amended by adding to

Chapter 8 thereof a new Article, to be known as Article IV, Massage Establishments, which shall read as follows:

Article IV. Massage Establishments

Sec. 8-22. Definitions.

For the purposes of this article the following words and phrases shall have the meaning respectively ascribed to them by this section:

Massage shall mean and include any process consisting in kneading, rubbing or otherwise manipulating the skin of the body of a human being, either with the hand or by means of electrical instruments or apparatus, or other special apparatus, but shall not include massage by duly licensed physicians, nor massage of the face practiced by duly licensed beauty parlors or barbershops.

Massage establishments shall mean any building, room, place or establishment other than regularly licensed hospitals where manipulated massage or manipulated exercises are practiced upon the human body by anyone not a duly licensed physician, whether with or without use of mechanical, therapeutic or bathing devices, and shall include Turkish bathhouses or any other establishment being operated as a business. This term shall not include, however, beauty parlors or barbershops duly licensed under the Penal Code of the State or registered physical therapists who treat only patients recommended by a licensed physician and who operate only under such physician's direction.

Sec. 8-23. License - Required.

It shall be unlawful for any person to operate a massage establishment without first having obtained a license therefor from the city secretary, in accordance with the provisions of this article, and paying the fee (unless it be a charitable or non profit organization), provided for in section 8-27. Such licenses shall only be issued upon the approval in writing of the health officer and the chief of police, and a certificate of occupancy from the building inspector.

Sec. 8-24. Same - Display.

The license required by this article shall be exhibited at all times in such establishments.

Sec. 8-25. Same - Investigation of applicant.

After an application has been made for an original license or a renewal of an existing license to operate a massage establishment as defined herein, the chief of police shall cause an investigation to be made of the applicant's character and whether or not the applicant has been convicted of any crime involving moral turpitude in any state, municipal or federal court, or whether the applicant is a person of unfit character, or whether the holder of a license for such an establishment, or any employee of such establishment committed any lewd, indecent or other act contrary to common decency during the last licensing period, or such an establishment employs any person convicted of any crime involving moral turpitude in any state, municipal or federal court, or whether such an establishment employs a woman who has been convicted of vagrancy or prostitution, or who is a known prostitute.

Sec. 8-26. Same - Applicant to furnish names of employees; medical certificates for employees.

At the time of making application for the license required by this article, the applicant shall furnish to the health department of the city the names and addresses of all employees of massage establishments and all such employees of massage establishments shall be required to secure from the health department a medical certificate certifying that such employee has been examined and that such examination discloses the fact that such person employed, or to be employed by such establishment, is free from any infectious or communicable disease. Such medical certificate shall be renewed annually by the health officer.

Sec. 8-27. Same - Fee; refund.

The annual license fee shall be twenty-five dollars for each such establishment. If the license is obtained between January first and June thirtieth of any year, the full amount of such fees shall be paid. If such license is obtained between July first and December thirty-first of any year, the fee shall be one-half of such amount. No refund shall ever be made of any such license fees.

Sec. 8-28. Same - Refusal to issue or renew.

The chief of police shall refuse to approve the issuance or renewal of any license required by this article to any applicant who has been convicted of any crime involving moral turpitude in any state, municipal or federal court, or where the applicant is a person of unfit character, or where the holder of a license for such an establishment or any employee of such an establishment committed any lewd, indecent or other act contrary to common decency during the last licensing period; or where any such establishment employs any person convicted of any crime involving moral turpitude in any state, municipal or federal court, or which employs a woman who has been convicted of vagrancy or prostitution, or who is a known prostitute.

Sec. 8-29. Same - Appeal from refusal to grant or renew.

In the event the chief of police shall refuse to approve the issuance of an original license or the renewal of a license to any applicant in this article, the action of the chief of police shall be final unless the applicant shall, within ten days after the refusal to approve the issuance of or the renewal of a license, file a written appeal with the city secretary, addressed to the city council, requesting a hearing by the city upon the question as to whether or not his application shall be granted.

In the event such appeal is filed, the chief of police shall provide the city council with a record of all proceedings theretofore had with reference to the application in question, including the written application, together with the action of the chief of police and the reasons for such action. The city council shall, within thirty days, grant a hearing thereon to determine the correctness of the action of the chief of police, at which hearing the city council may make such investigation as it may see fit, whether all the pertinent facts appear in the application or not, and the city council shall determine whether or not such license shall be granted or refused, and such action as the city council shall take thereon shall be final and conclusive.

Sec. 8-30. Same - Revocation.

Any license issued by the city secretary of the City of Abilene, after approval in writing by the director of public health and the chief of police, pursuant to this article, may be suspended or revoked by the chief of police when it shall appear that the business of the person to whom such permit was issued has been conducted in a disorderly or improper manner, or in violation of any statute of the state, any provision of this Code or other ordinance of the city, or that the person conducting such business is of unfit character to conduct same, or that

the purpose for which such license has been issued is being abused, to the detriment of the public, or that the license is being used for a purpose different from that for which it was issued to the license holder or that the establishment is not kept in a sanitary condition as determined by the health officer. Such notice of revocation shall be given by the chief of police in writing and shall be addressed to the license holder's last known business address.

Sec. 8-31. Same - Appeal from decision to revoke.

In the event the chief of police revokes the license issued to any license holder under this article, the action of the chief of police shall be final unless the license holder shall, within ten days after the receipt of written notice of such revocation, file a written appeal with the city secretary addressed to the city council, requesting a hearing by the council upon the question as to whether or not such license should have been revoked.

In the event such appeal is filed, the chief of police shall provide the city council with a record of all the proceedings theretofore had with reference to the revocation of the license in question, together with the action of the chief of police and the reasons for such action. The city council shall, within thirty days, grant a hearing thereon to determine the correctness of the action of the chief of police, at which hearing the city council may make such investigation as it may see fit, and the city council shall determine whether or not the action of the chief of police should be ratified and confirmed, or should be set aside, and such decision of the city council, after such hearing, shall be final and conclusive as to all parties.

Sec. 8-32. Hours of operation; living, etc., quarters therein prohibited.

No massage establishment shall be kept open for any purpose between the hours of 10:00 p.m. and 8:00 a.m., and no such establishment shall be operated or conducted in connection with any place used for living or sleeping quarters.

Sec. 8-33. Right of inspection, interference with inspectors.

The officers of the police and health departments of the city are hereby authorized and empowered to enter, for the purpose of inspection, and to inspect at any time massage establishments in the city, for the preservation of law and order and decency and further empowered to, at any time, make such examinations through the licensed physicians of the

department of health of the city as are necessary to determine whether or not such employees are infected with any infectious disease.

It shall be grounds for the revocation of licenses issued under this article to interfere with the inspection of such premises.

Sec. 8-34. Employing prostitutes prohibited.

It shall be unlawful for any person operating such an establishment to employ a known prostitute in any capacity therein.

Sec. 8-35. Employing homosexuals prohibited.

It shall be unlawful for any person operating such an establishment to employ a known homosexual in any capacity therein.

Sec. 8-36. List of employees.

The manager or person in charge of massage establishments shall keep a list of the names and addresses of all employees, both on duty and off duty, and such list shall be shown to all proper authorities of the police and health departments upon request.

Sec. 8-37. Operation in residential area prohibited.

It shall be unlawful for any massage establishment to be operated in any section of the city which is zoned for residential purposes.

Sec. 8-38. Sanitary requirements.

It shall be the duty of every person conducting or operating a massage establishment to keep the same at all times in a clean and sanitary condition. All instruments and mechanical, therapeutic, and bathing devices, or parts thereof, that come into contact with the human body, shall be sanitized by a modern and approved method of sanitization before initial use, and any such instruments and devices, or parts thereof, after having been used upon one patron shall be sanitized before being used on another. All towels and linens furnished for use of one patron shall not be furnished for use of another until thoroughly laundered.

Sec. 8-39. Administering massage to person of opposite sex.

It shall be unlawful for any person to administer a massage in any massage establishment to any person of the opposite sex; provided however, that this section shall not apply to a licensed chiropractor, nor shall it apply to any registered physical therapist or registered nurse operating under the direction of a physician.

Sec. 8-40. Disorderly.

Licenseses or employees of massage establishments who commit any lewd, immoral or indecent act will be charged with the offense of disorderly conduct.

PART 2: That if any provision of this ordinance or the application thereof to any person or circumstance shall be held invalid such invalidity shall not affect the provision or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

PART 3: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Two Hundred Dollars (\$200.00). Each such violation which shall continue or be permitted to continue shall be deemed a separate offense.

PASSED ON FIRST READING this 27th day of September, A. D. 1973.

PASSED ON SECOND AND FINAL READING this 11th day of October, A. D.

1973.

ATTEST:

Ruth Hodgins  
CITY SECRETARY

J. C. Hunter  
MAYOR

APPROVED:

W. J. Hunter  
ASSISTANT CITY ATTORNEY