

Ordinance 2017-15
An Ordinance Creating Chapter 5.14 of the Municipal Code
Massage Establishments

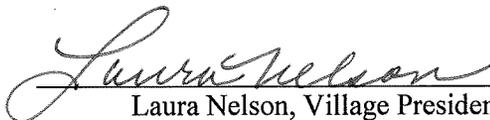
The Village Board of The Village of Suamico, Wisconsin Does Ordain as Follows:

Ordinance Section 1: Section 5.14, Massage Establishments of the Municipal Code is created to read as attached.

Ordinance Section 2: All ordinances or parts of ordinances inconsistent with or contravening the provisions of this ordinance are hereby repealed.

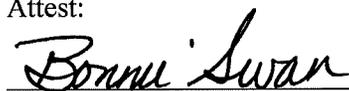
Ordinance Section 3: This ordinance shall be in full force and effect following passage and publication.

Adopted this 4^h day of December, 2017.



Laura Nelson, Village President

Attest:



Bonnie Swan, Village Clerk

Nelson aye
Schneider aye
Eckert aye
Ward aye

Andrews aye
VanRossum aye
Roddan aye

Date Posted: _____

Chapter 5.14 - MASSAGE ESTABLISHMENTS

(1) GENERALLY:

(a) - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Manager means the operator or an agent licensed under this section who shall not be licensed as a massage technician.

Massage means any process or procedure consisting of rubbing, stroking, kneading or tapping, by physical or mechanical means, upon the external parts or tissues of the body of another for a consideration.

Massage establishment means a place of business wherein private massage is practiced, used or made available as a principal use of the premises.

Massage room means the area where private massage is performed.

Massage technician means a person who practices, administers or uses, or offers to practice, administer or use, massage for a consideration.

Operator means any person, association, firm, partnership or corporation licensed by the village to operate a massage establishment.

Patron means any person who receives a massage under such circumstances that it is reasonably expected that he will pay money or give any consideration therefor.

Sexual or genital parts means and includes the genitals, pubic area, buttocks, anus or perineum of any person, or the vulva or breasts of a female.

Waiting area means any area adjacent to the main entrance that is separate from any area where massages are given.

(b) - Penalty.

Any person violating any provision of this section shall, upon conviction, be subject to a penalty as provided in sect. 5.99.

(c) - Regulated.

It shall be unlawful for any person, corporation or other legal entity to suffer, cause or permit the operation of a massage establishment or for a person to operate as a massage technician, agent, manager or employee, except in strict compliance with this article.

(2) - License.

- (a) No person, corporation or other legal entity shall suffer, cause or permit the conduct of a massage establishment without having first obtained a license therefor from the village board. A separate license shall be acquired for each such establishment.
- (b) No license shall be granted for any establishment, the main entrance to which is within 75 feet of the main entrance to a residence or of the common entry hall to residences, nor for any rooms in any hotel or motel.
- (c) Applications shall be made in writing on forms supplied by the village clerk. If application is made for a location not previously licensed, the village clerk shall, by regular mail, notify all property owners

and registered electors within 250 feet of the proposed location at least ten days before the hearing on the granting of such license.

- (d) All applications shall include the following:
 - (1) A nonrefundable fee of \$250.00.
 - (2) The location and mailing address of the proposed establishment.
 - (3) For an individual or for each person of a partnership or joint venture or agent of a corporation, the following:
 - a. Name and present address.
 - b. The two immediately previous addresses and dates of residence at each.
 - c. Height, weight, color of hair and eyes, social security number, written proof of age, full set of fingerprints and two photographs not more than 30 days old and at least two inches by two inches.
 - d. The business or occupation for the two years immediately preceding the date of application.
 - e. Whether a similar license has been revoked or suspended and, if so, the reason therefor and the location thereof.
 - f. Whether convicted of any crime or ordinance violation other than traffic offenses within the past three years and, if so, a listing of the same and the locations thereof.
 - (4) If the applicant is a corporation, the names and addresses of each officer and director and of the stockholders of such corporation, together with the extent of the ownership of each, and a statement whether such officer, director or stockholder holds office or stock in any other corporation conducting a similar business in the state. Such application shall be made by an agent registered as such who shall have been a resident of the village for at least 90 days.
 - (5) All telephone numbers of the proposed establishment.
 - (6) The names, addresses and telephone numbers of all persons employed by the applicant at the proposed establishment at the time of the application.
 - (7) Certification of compliance of the proposed premises with the building code and the fire code or, in the alternative, applicant shall file a bond assuring that any work required to be done to bring the premises into compliance therewith shall be accomplished prior to the opening of business. Compliance with such codes shall be conditions precedent to the opening of business.
 - (8) The application shall contain a statement signed by the applicant and each individual of a partnership or joint venture that all information contained therein is true and correct.
- (e) The issuance of the license shall allow for the licensing of up to three additional managers for each establishment.

(3) - Massage technician's and manager's permits.

- (a) No person shall act or operate for a consideration as a massage technician or manager without having first obtained a permit to do so. Any person who is issued a license of registration by the state department of regulation and licensing pursuant to subchapter XI of chapter 440 of the Wisconsin Department of Regulation and Licensing Administrative Code is exempt from this section.
- (b) Applications for permits shall be in writing on forms supplied by the village clerk:
 - (1) A nonrefundable fee of \$50.00.

- (2) Applicant's full name and present address, social security number, written proof of age in excess of 18 years, height, weight, color of hair and eyes, full set of fingerprints and two photographs not more than 30 days old and at least two inches by two inches.
- (3) Applicant's two previous addresses and dates of residence at each.
- (4) The applicant's business, occupation or employment during the two years immediately preceding date of application.
- (5) Whether the applicant has had a similar permit revoked or suspended and, if so, the reason therefor and the location thereof.
- (6) Whether the applicant has been convicted of any crime or ordinance violation other than traffic offenses within the past three years and, if so, a listing of the same and the locations thereof.
- (7) For technicians only, a certificate from a licensed physician that the applicant has been examined and found to be free of communicable diseases and showing that such examination occurred less than 30 days prior to the date of application.
- (8) The name and address of the licensed massage establishment by which the applicant is employed.
- (9) A statement signed by the applicant that all information contained therein is true and correct.

(4) - Granting of licenses and permits.

- (a) Licenses and permits may be granted by the village board after a hearing at which the applicant may be heard at the applicant's option. At least ten days' notice of such hearing shall be given to the applicant.
- (b) The village board shall grant a license or permit within 30 days of application unless it is shown, for a massage establishment license, that the operation, as proposed by the applicant, does not comply with all applicable state laws and village ordinances, and for all licenses and permits, that the applicant or any partner or any officer, director or stockholder of a corporate applicant has been convicted in a court of competent jurisdiction of an offense under Wis. Stats. ch. 944 or involving substances included in Wis. Stats. § 961.11 et seq., or of an offense against the person or property of another within the past three years, that the information required on the application is incomplete or that any applicant has knowingly or with the intent to deceive made any false, misleading or fraudulent statement of fact in the application or any document required by the village in conjunction therewith, or that the applicant has not resided in the village for at least 90 days prior to the date of the application.
- (c) In the event of denial, the applicant shall receive written notification thereof, setting forth the reasons for the denial, within ten days after such denial.
- (d) Licenses or permits granted by the village board shall expire one year from the date of granting. Reapplication therefor shall not be less than 60 days prior to such expiration date and shall be the sole responsibility of the applicant.
- (e) No license or permit shall be transferred between locations or persons and no massage establishment license shall be sold or be subject to transfer of corporate assets or change of corporate officers or directors.
- (f) The massage technician's permit does not entitle the holder to operate or manage a massage establishment unless the technician is the sole proprietor of the establishment and employs no other person in the business.

(5) REGULATIONS OF OPERATIONS

(a) - Operation regulations—For establishments.

Each establishment shall, at all times, maintain and comply with the following general regulations:

- (1) The establishment shall comply with all state laws and all ordinances of the village.
- (2) Only one nonflashing business sign clearly identifying the establishment as a massage establishment shall be posted at the main entrance. No description of services shall be permitted on such sign.
- (3) No establishment shall be open for business between the hours of 10:00 p.m. and 8:00 a.m.
- (4) Only massage technicians having permits issued pursuant to this article shall be employed as massage technicians by the establishment.
- (5) The practice of all massage technicians employed by the establishment shall be limited to the licensed premises.
- (6) No person under the age of 18 years shall be permitted on the premises.
- (7) No intoxicating beverages or substance included in Wis. Stats. ch. 161, subch. II, shall be permitted in the licensed establishment. Food shall be permitted only when there is no charge therefor and when a food preparation area, including a sink with hot and cold running water, is a part of the establishment.
- (8) The establishment shall provide a waiting area for patrons separate from any area wherein massages are given. There shall be direct access to this area from the main entrance or from the hallway connected only to the main entrance.
- (9) The operator or a manager having a permit shall be present on the premises at all times during hours of operation and shall be responsible for the operation of the establishment.
- (10) The establishment shall permit inspections of the premises at any time during business hours by village building inspectors, fire inspectors, health inspectors or personnel of any law enforcement agency.
- (11) The establishment shall keep current records of the names and addresses of its massage technicians, agents, managers and employees and the date of employment and termination of each. Such records shall be open to inspection by any of the personnel listed in subsection (10) of this section.
- (12) The establishment shall report any change of fact required on the application form and all personnel changes to the village clerk within ten days after such change.

(b) - Same—For technicians.

Each technician shall at all times comply with the following regulations:

- (1) The technician shall practice only on the premises of a licensed massage establishment.
- (2) The technician shall massage only patrons over the age of 18 years.
- (3) No technician shall administer a massage:
 - a. If said technician believes, knows or should know that he is not free of any contagious or communicable disease or infection.
 - b. To any massage patron exhibiting any skin fungus, skin infection, skin inflammation or skin eruption.

- (4) The technician shall report any change of fact required in the application form to the village clerk within ten days after such change.
- (5) It shall be unlawful for any person:
 - a. In a massage establishment to place his hand upon, to touch with any part of his body, to fondle in any manner, or to massage a sexual or genital part of any other person.
 - b. In a massage establishment to expose his sexual or genital parts, or any portion thereof, to any other person. It shall also be unlawful for any person in a massage establishment to expose the sexual or genital parts, or any portion thereof, of any other person.
 - c. While in the presence of any other person in a massage establishment, to fail to conceal with a fully opaque covering, the sexual or genital parts of his body.
 - d. Owning, operating or managing a massage establishment, knowingly, to cause, allow or permit in or about such massage establishment any agent, employee or any other person under his control or supervision to perform such acts prohibited in subsection (5)a, b or c of this section.
 - e. In a massage establishment, for a consideration, to offer to perform or to make available, permit or in any way participate in the performance of any act prohibited by subsection (5)a, b or c of this section.

(6) - REVOCATION OR SUSPENSION OF LICENSE OR PERMIT

(a) - Grounds.

The license or permit granted herein may be revoked, or suspended for up to six months, by the village board for any of the following reasons:

- (1) If the applicant has made or recorded any statement required by this article knowing it to be false or fraudulent or intentionally deceptive.
- (2) For the violation of any provision of this article.
- (3) If a technician's or manager's permit, after one conviction of any offense under Wis. Stats. ch. 944, or of an offense involving substances included in Wis. Stats. ch. 161, subch. II, or of any offense against the person or property of a patron, whether such occurred on or off the premises of the establishment.
- (4) If an establishment license, after one conviction of any establishment personnel of an offense under Wis. Stats. ch. 944, or of an offense against the person or property of a patron or of an offense involving substances in Wis. Stats. ch. 161, subch. II, where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant.

(b) - Notice and hearing.

No license or permit shall be revoked or suspended by the village board, except upon due notice and hearing to determine whether grounds for such action exist. The notice shall be in writing and shall state the grounds of the complaint against the licensee or permittee. The notice shall be served upon the licensee or permittee at least 15 days prior to the date of the hearing and shall state the time and place thereof. The licensee or permittee shall be entitled to be heard, to be represented, to cross examine opposing witnesses, and to present witnesses in his own behalf under the subpoena of the village board if such is required. The hearing shall be stenographically recorded and a copy of the transcript shall be available to the licensee or permittee at the expense of the licensee or permittee. The village board shall decide the matter and shall prepare a written decision which shall be filed with the village clerk and a copy thereof mailed to the licensee or permittee within 20 days after the hearing.

(c) - Exceptions.

This article shall not apply to the following classes of individuals while engaged in the duties of their respective professions:

- (1) Physicians, surgeons, chiropractors, osteopaths, masseurs, physical therapists licensed or registered to practice their respective professions under the laws of the state, or nurses registered under the laws of the state acting under their direction and control, or certified massage therapists operating out of a physician, surgeon or chiropractic facility and acting under their direction and control.
- (2) Barbershops and beauty parlors, barbers and beauticians licensed under the laws of the state, provided that such massage as is practiced is limited to the head and scalp.
- (3) Accredited high schools and colleges and coaches and trainers therein while acting within the scope of their employment.

(7) - Operation without a license a public nuisance.

The operation of a massage establishment without a license or the activity of an individual as a massage technician without a permit is deemed a public nuisance and may be enjoined by the village.