

Massage Therapy Regulation Proposal for Lawrence, KS

Based upon the Federation of State Massage Therapy Board's (FSMTB) *Model Massage Therapy Act*
 Modified to accommodate implementation by the City of Lawrence
 Modified by Holly Krebs, with input from the Lawrence Bodywork Community

SECTION 1: Chapter VI, Article 1, Section 6-108.2 of the Code of the City of Lawrence, Kansas 2015 Edition and amendments thereto, is hereby amended to read as follows:

6-108.2	Massage Therapy			
	<u>Massage Therapy License, original</u>	\$ _____	2 year	Dec. 31
	<u>Massage Therapy License, renewal</u>	\$ _____	2 year	Dec. 31

SECTION 2 and 3 from the Draft Ordinance 9305 for the City of Lawrence

SECTION 4: The Code of the City of Lawrence, Kansas, 2015 Edition and amendments thereto, is hereby amended by enacting Chapter VI, Article 20, which reads as follows:

6-2001 PURPOSE.

The purpose of this Article is to protect the health, safety, and welfare of the residents of the City of Lawrence, KS. The Governing Body declares that the practice of Massage Therapy is a healthcare profession in need of regulation and that only qualified persons be permitted to professionally engage in the practice as defined herein.

Comment [HK1]: From FSMTB model.

6-2002 DEFINITIONS.

The following words, terms, and phrases, when used in this Article, shall, except where the context clearly indicates otherwise, have the following meanings:

Comment [HK2]: Defined words are primarily from the FSMTB model.

Comment [HK3]: From the proposed City regulations.

- A. **Applicant** shall, for the purposes of this Article, mean an individual seeking licensure under this Article who has submitted an application and fee to the City Clerk.
- B. **Approved Massage Therapy Education Program** shall, for the purposes of this Article, mean a school or educational program that, at a minimum, includes 500 Clock Hours, is authorized in the jurisdiction in which it is located, and reflects a curriculum acceptable to an accrediting body recognized by the U.S. Department of Education. Education received outside of the United States must be substantially equivalent to the criteria of this Act and must be recognized by the jurisdiction in which it is located.
- C. **City Clerk** shall, for purposes of this Article, mean the City Clerk, the interim City Clerk, anyone fulfilling duties of the City Clerk on either a temporary or permanent basis, or any designee of the City Clerk.

Comment [HK4]: From the proposed City regulations.

- D. **Client** shall, for the purposes of this Article, mean the individual that seeks or receives Massage Therapy services. Client status is not dependent on billing or payment of fees for such services.
- E. **Clock Hour or Credit Hour** shall, for the purposes of this Article, mean a full sixty (60) minute period, with at least fifty (50) minutes of instruction or learning activities.
- F. **Continuing Education** shall, for the purposes of this Article, mean education and training that maintains, improves, or enhances Massage Therapy practice.
- G. **Conviction** shall, for the purposes of this Article, mean a finding of guilt, an admission of guilt or plea of nolo contendere, regardless of adjudication.
- H. **Currently Enrolled Student** shall, for the purposes of this Article, mean a student who is actively participating in an Approved Massage Therapy Education Program.
- I. **Examination** shall, for the purpose of this Article, mean the Massage and Bodywork Licensing Exam (MBLex), the standardized test and examination of entry-level massage and bodywork knowledge, skills, and abilities, developed and administered by the Federation of State Massage Therapy Boards (FSMTB).
- J. **Felony** shall, for the purposes of this Article, mean a criminal act as defined by Kansas or any other state, or by definition under federal law.
- K. **Licensee** shall, for the purposes of this Article, mean a person duly licensed under this Act.
- L. **Massage Therapist** shall, for the purposes of this Article, mean an individual licensed to practice Massage Therapy.
- M. **Massage Therapy License** shall, for the purposes of this Article, mean a certificate granting permission for an individual to work as a massage therapist within the City of Lawrence.
- N. **Massage Therapy** shall, for the purposes of this Article, mean the mobilization of the soft tissue which may include skin, fascia, tendons, ligaments, and muscles, for the purpose of establishing and maintaining good physical condition. The term shall include effleurage, petrissage, tapotement, compression, vibration, stretching, heliotherapy, superficial hot and cold application, topical applications, or other therapy which involves movement either by hand, forearm, elbow, or foot, for the purpose of therapeutic massage.
- O. **Standards of Practice and Code of Ethics** shall, for the purposes of this Article, mean these documents written by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) and/or the American Massage Therapy Association (AMTA).

6-2003 PRACTICE OF MASSAGE THERAPY

- A. To practice Massage Therapy in the City of Lawrence, a Massage Therapist must hold a current Massage Therapy License.
- B. A Massage Therapist must conspicuously display the license to practice Massage Therapy and must use the acronym "LMT" to designate licensure under this Article.

Comment [HK5]: Modified from both proposed City regulations and FSMTB's model.

C. Special Provisions

1. Temporary Practice

- i. Currently Enrolled Students. This Article shall not be construed to apply to or restrict a Currently Enrolled Student in an Approved Massage Therapy Education Program from engaging in the practice of Massage Therapy, provided the practice, conduct, activities or services constitute a part of a required course of study in the program and that such persons are identified as students.
- ii. Planned Events. This Article shall not be construed to apply to or restrict an individual currently licensed and in good standing to practice Massage Therapy in another jurisdiction from engaging in the practice of Massage Therapy in this jurisdiction on a temporary basis for a period of not more than 30 days or not longer than the period of the event, whichever is less. Such temporary practice privileges shall apply for no more than thirty (30) days per year and are limited to acts related to the practice of Massage Therapy at planned event(s) and on identified persons of an identified team or participants at planned event(s) including visiting sports teams, planned athletic events, and education seminars. Practitioners under this subsection are not authorized to practice Massage Therapy on the general public.
- iii. Declared Emergencies. This Article shall not be construed to apply to or restrict an individual currently licensed and in good standing to practice Massage Therapy in another jurisdiction from engaging in the practice of Massage Therapy on a temporary basis and in response to a disaster or emergency declared by the appropriate authority or Governor of this state.

2. Other Practitioners.

- i. Massage Therapists licensed in other jurisdictions may participate in Continuing Education programs but are not authorized to practice Massage Therapy on the general public.
- ii. This Article shall not be construed to apply to manual therapists who are licensed, certified, or accredited by non-massage, nationally-recognized manual therapy teaching institutes, and who do not offer, hold out, or claim to be Massage Therapists. These include practitioners of:
 1. Body-Mind Centering
 2. Chiropractics
 3. Craniosacral Therapy
 4. Feldenkrais
 5. Lymphatic or Manual Lymph Drainage
 6. Ortho Bionomy
 7. Physical Therapy
 8. Polarity Therapy
 9. Structural Integration: Rolfing, Hellerwork, SOMA, and all schools recognized by the International Association of Structural Integrators (IASI)
 10. Traditional Chinese Medicine/Acupuncture
 11. Trager
- iii. The City Clerk and the Massage Therapy Board of Appeals may exempt a manual therapist from this Article's requirements and/or add approved

non-massage, manual therapies to the list in 6-2003 C. 2. ii. if a practitioner of such therapy provides adequate documentation of their certification from a non-massage, nationally-recognized manual therapy teaching institute.

3. Service to Family Members. This Article shall not be construed to apply to or restrict an individual from providing services related to the domestic care of any family member or household member as long as such persons do not offer, hold out, or claim to be a Massage Therapist and do not receive payment or other compensation for such work.

Comment [HK6]: From proposed State regulations and FSMTB model. Other practitioners section is clearer, less inclusive distillation from the State proposed regulations.

Comment [HK7]: Abbreviated from FSMTB model.

Comment [HK8]: Modified from proposed City regulations.

6-2004 QUALIFICATIONS FOR INITIAL LICENSURE

(A) Every Applicant for a Massage Therapy License shall submit to the City Clerk (1) a completed application, which shall include the Applicant's contact information and expected location of Applicant's professional practice; (2) the required License fee to the City Clerk; and (3) supporting documentation verifying the Applicant:

1. Is at least eighteen (18) years of age;
2. Has a high school diploma or equivalent;
3. Has graduated from an Approved Massage Therapy Education Program;
4. Meets one of the following requirements:
 - a. Has successfully passed the Massage and Bodywork Licensing Exam (MBLex) developed and administered by the Federation of State Massage Therapy Boards (FSMTB); **OR**
 - b. Successfully passed the old National Certification Examination (NCE) produced by National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) and/or has maintained "board certification" by NCBTMB;
5. Has a current professional massage therapy liability insurance policy;
6. Provides the names, addresses, phone numbers, and email addresses of two personal references;
7. Has submitted fingerprints for the purpose of a state and federal criminal records check, which will be considered for purposes of qualifications for licensure to the extent permitted by law, in order to verify that the Applicant has not been convicted, under the laws of the State of Kansas or any other jurisdiction, a felony, a personal misdemeanor, a sexually-related offense, or any violation of this Article ; and
8. Has not had a Massage Therapy License denied, revoked, or suspended by the City or another jurisdiction within the preceding two (2) years.
 - a. If the Applicant has information showing that the denial, revocation, or suspension of his/her Massage Therapy License was unjustified, the Applicant may present such information to the City Clerk and/or Massage Therapy Appeals Board, who shall determine if this requirement may be waived.

Comment [HK9]: From FSMTB model. Some requirements also in proposed City regulations.

Comment [HK10]: From proposed City regulations.

6-2005 QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT

Comment [HK11]: Section primarily taken from FSMTB model.

(A) Persons who are licensed to practice Massage Therapy in another jurisdiction may seek licensure in Lawrence through licensure by endorsement. To obtain a license to practice Massage Therapy by endorsement, the Applicant must provide evidence satisfactory to the City Clerk that the Applicant:

1. Is licensed in good standing in any other state, territory, or jurisdiction of the United States;
2. Has actively practiced for at least two (2) of the last three (3) years;
3. Has a current professional massage therapy insurance policy;

4. Has submitted fingerprints for the purpose of a state and federal criminal records check, which will be considered for purposes of qualifications for licensure to the extent permitted by law, in order to verify that the Applicant has not been convicted, under the laws of the State of Kansas or any other jurisdiction, a felony, a personal misdemeanor, a sexually-related offense, or any violation of this Article; and
5. Has presented to the City proof that any other Massage Therapy license or any other professional license granted to the Applicant in any other state, territory, or jurisdiction in the United States has not been subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes.

Comment [HK12]: From proposed City regulations.

6-2006 RECOGNITION OF PRACTITIONERS ON THE EFFECTIVE DATE

Comment [HK13]: Grandfather section. Primarily taken from FSMTB model.

(A) Notwithstanding the qualifications under Section 301 and for a period not to exceed two (2) years from the effective date of this Article, persons who have engaged in the practice of Massage Therapy or have taught core clinical courses at an Approved Massage Therapy Education Program may be eligible for licensure. Applicants for licensure under this Section must provide evidence satisfactory to the Board of the following:

1. Has submitted a complete Massage Therapy License application;
2. Has paid the required License fee;
3. Is at least eighteen (18) years of age;
4. Has a high school diploma or equivalent;
5. Meets one of the following requirements:
 - a. Has regularly practiced Massage Therapy in Kansas for at least two (2) of the last three (3) years; **OR**
 - b. Has regularly taught core clinical courses at an Approved Massage Therapy Education Program in this state for two (2) of the last three (3) years; **OR**
 - c. Has successfully passed the Massage and Bodywork Licensing Exam (MBLex) developed and administered by the Federation of State Massage Therapy Boards (FSMTB); **OR**
 - d. Successfully passed the old National Certification Examination (NCE) produced by National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) and/or has maintained "board certification" by NCBTMB;
6. Has a current professional massage therapy liability insurance policy;
7. Provides the names, addresses, phone numbers, and email addresses of two personal references;
8. Has submitted fingerprints for the purpose of a state and federal criminal records check, which will be considered for purposes of qualifications for licensure to the extent permitted by law, in order to verify that the Applicant has not been convicted, under the laws of the State of Kansas or any other jurisdiction, a felony, a personal misdemeanor, a sexually-related offense, or any violation of this Article; and
9. Has not had a Massage Therapy License denied, revoked, or suspended by the City or another jurisdiction within the preceding two (2) years and, if so, the reason for the denial, suspension, or revocation.
 - a. If the Applicant has information showing that the denial, revocation, or suspension of his/her Massage Therapy License was unjustified, the Applicant may present such information to the City Clerk and/or Massage Therapy Appeals Board, who shall determine if this requirement may be waived.

Comment [HK14]: From proposed City regulations.

6-2007 MASSAGE THERAPY LICENSE FEES

- A. The fee for a Massage Therapy License for the first year shall be \$____ per person. This shall cover the costs of an initial criminal records check.
- B. The annual renewal fee for a Massage Therapy License shall be \$____ per person.

Comment [HK15]: Rates should be based on comparable rates from surrounding states and cities, but not by the outliers.

6-2008 LICENSURE RENEWAL REQUIREMENTS

- A. Massage Therapy Licenses shall be valid for a period of one year and shall expire on December 31 of the in year which they are issued.
- B. The City Clerk shall send out License renewal notices to all Licensees by October 1 of each year, and renewal fees shall be due on January 1 of the following year.
- C. Licensees shall include proof of current massage therapy liability insurance coverage with their renewal fee.
- D. The City may request additional information from renewal Applicants.

Comment [HK16]: Modified from proposed City regulations.

6-2009 MASSAGE THERAPY LICENSE ISSUANCE

- A. The City Clerk shall review each application for a Massage Therapy License. If the Applicant meets all the requirements, the City Clerk shall issue a Massage Therapy License within twenty-one (21) days of receipt of the application; if the Applicant does not meet all the requirements, the City Clerk shall notify the Applicant of the denial of his or her license.
- B. If the Applicant does not meet all of the requirements, the City Clerk will inform the Applicant of which requirement(s) are not met, and the Applicant may provide subsequent documentation to verify meeting all the requirements. Within twenty-one (21) days of receipt of the additional information, the City Clerk shall issue a Massage Therapy License; if the Applicant cannot meet the Massage Therapy License requirements, the City Clerk shall notify the Applicant of the denial of his or her license.

Comment [HK17]: Some material from proposed City regulations.

6-2010 UNLAWFUL PRACTICE AND UNLICENSED PRACTICE

Comment [HK18]: Primarily from FSMTB model. Some offenses also reflected in the proposed City regulations.

(A) It is unlawful for any person or entity to:

1. Practice Massage Therapy without a valid license;
2. Aid and/or abet another person or entity in the unlicensed practice of Massage Therapy;
3. Own, operate, or manage a business which employs, contracts with, or allows one or more unlicensed persons to offer or provide Massage Therapy;
4. Represent, hold out, offer or advertise that he or she is a licensed Massage Therapist unless licensed by the City;
5. Advertise or use the words Massage Therapy, massage, massage-bodywork therapy, bodywork therapy, or massage bodywork therapist, massage therapist, bodywork therapist, or the letters "LMT" or any other words, abbreviations or insignia indicating or implying that Massage Therapy is provided, or supplied, unless such persons providing the services are licensed pursuant to this Article;
6. Advertise a service, the provision of which would constitute a violation of this Article;
7. Commit fraud, deceit or misrepresentation in obtaining or attempting to obtain or renew a license; or
8. Misuse a license certificate, including sale or barter of a license; use of another's license; or allowing use of a license by an unlicensed person or entity.

(B) The City may:

1. Fine any individual whom or entity which is found by the City Clerk to have unlawfully engaged in the practice of Massage Therapy; such fine is not to exceed \$____ for each offense. Each such violation of this Article pertaining to having unlawfully engaged in the practice of Massage Therapy shall also constitute a crime punishable upon Conviction as provided in the Criminal Code of Kansas.
2. Seek a civil penalty, seek an injunction, issue a cease and desist order and/or make a criminal referral in order to restrain a violation of the Article.

(C) Nothing herein shall be construed to prohibit criminal prosecutions under the applicable criminal code for violations of this Article.

6-2011 MASSAGE THERAPY LICENSE DISCIPLINE

- A. Grounds for Disciplinary Action: The following shall be grounds for the City to impose one or more disciplinary actions:
 1. Conduct that violates any provision of this Article, including a violation of Standards of Practice and Codes of Conduct for Massage Therapist;
 2. Aiding or abetting another person in the violation of this Article;
 3. Practicing outside the scope of authority, training and education;
 4. Delegation of professional responsibilities to a person who is not educated or trained to undertake such responsibilities;
 5. Incapacity or impairment that prevents such Licensee from engaging in the practice of Massage Therapy with reasonable skill, competence, and safety as determined by a doctor;
 6. Conviction of:
 - i. a felony;
 - ii. any crime related to the practice of Massage Therapy;
 7. Violations of the laws or rules of this state, violations of the laws or rules of any other state or violations of the laws or rules of the federal government;
 8. Failure to pay the costs or fines assessed by the City;
 9. Being subject to any disciplinary sanction from this or any other jurisdiction against any professional license, including any license related to the practice of Massage Therapy;
 10. Negligence, gross negligence, incompetence or gross incompetence as determined by a judge or court;
 11. Deceptive, untrue, or fraudulent billing, charges, use of title, terms or representations in the practice of Massage Therapy.
- B. Disciplinary Actions: The City Clerk and City Manager may impose the following disciplinary actions upon any person or entity for one or more of the Grounds for Disciplinary Action of this subsection:
 1. Refuse to issue, renew, or reinstate a license;
 2. Revoke, suspend, restrict, or limit a license;
 3. Place a license holder on probation, including placing limits on the Licensee's practice and/or requiring supervision;
 4. Issue a reprimand;
 5. Issue a cease and desist letter;
 6. Require payment of a fine of no more than \$____ maximum per offense;
 7. Require physical or mental evaluation for fitness to practice and/or relevant treatment if Licensee has been determined incapable or impaired as outlined in 6-2011 A;
 8. Enter into a consent order or settlement agreement.

Comment [HK19]: Modified from FSMTB model. Sanctions amended from proposed City regulations.

Comment [HK20]: This section fully from FSMTB model. This captures the true purpose of professional regulations – to verify that therapists are acting professionally, safely, and ethically. This idea of this section was not included in the proposed City regulations.

- C. Summary Suspension: The City may impose an immediate suspension of licensure in cases where continued practice by a Massage Therapist poses an imminent and continuing threat to public health, welfare, or safety so long as the City Clerk schedules a hearing to occur within 60 days of the effective date of the suspension order.

6-2012 APPEAL

Any person aggrieved by the action of the City Clerk and/or City Manager in denying or revoking a Massage Therapy License or the imposition of a disciplinary action shall have the right to appeal that action to Massage Therapy Appeals Board. Such appeal shall be taken by filing with the City Clerk a Notice of Appeal within thirty (30) days of the date of the Notice of Denial or the Notice of Revocation. The Notice of Appeal must be in writing and must set forth why the Applicant or Licensee believes that the denial or revocation is erroneous. After the Notice of Appeal is filed, the Massage Therapy Appeals Board shall set a time and place for hearing the appeal. Notice of the hearing shall be given to the Applicant or Licensee in the same manner as the Notice of Denial or Revocation.

Comment [HK21]: Directly from proposed City regulations with a Massage Therapy Appeals Board replacing the City Manager.

6-2013 MASSAGE THERAPY BOARD OF APPEALS

A. Members of the Massage Therapy Board of Appeals shall be appointed by the mayor with the approval of the City Commission. Each board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings and the reasons therefore in writing to the appellant with a duplicate copy to the City Clerk. The Board of Appeals may provide technical expertise and guidance as a code committee recommending to the City Commission any changes necessary for the adoption of codes and ordinances.

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B. The board of appeals shall consist of five members The members of the Board shall serve for three (3) years unless sooner removed for cause. One (1) or more members' term(s) shall expire each year. The Board shall consist of five (5) members: three (3) currently licensed massage therapists, one (1) currently licensed non-massage health care practitioner, and one (1) member from the public at large who works or resides within the City of Lawrence and have an interest in serving.. Board members shall be either a City of Lawrence resident or a Douglas County resident who is an employee of, or owns, a business within the City of Lawrence. Each member is eligible to serve two (2) consecutive terms. Three (3) members of the Board shall constitute a quorum for the transaction of business.

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SECTION 5. If any section, sentence, clause, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

SECTION 6. After passage and publication as provided by law, this ordinance shall be in full force and effect commencing _____.

Comment [HK22]: From proposed City regulations.

