

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE, AS PREVIOUSLY AMENDED, BY AMENDING SECTION 4.20.2 “SCHEDULE OF PRINCIPAL USES” BY ADDING “MASSAGE ESTABLISHMENT;” AMENDING SECTION 4.20.4 “SCHEDULE OF PRINCIPAL USES CENTRAL BUSINESS DISTRICT” BY ADDING “MASSAGE ESTABLISHMENT;” AMENDING SECTION 6.03.2 “PRIVATE CLUBS-OPERATIONAL REGULATIONS” RELATING TO OUTDOOR SERVICE; AMENDING SECTION 6.06 “SUPPLEMENTAL USE REGULATIONS” TO ADD SECTION 6.06.16 TITLED “MASSAGE ESTABLISHMENTS” RELATING TO THE USE AND DEVELOPMENT OF MASSAGE ESTABLISHMENTS; AMENDING SECTION 7.03.2 “EXTERIOR FAÇADE MATERIALS” CORRECTING A SCRIVENER ERROR; AMENDING SECTION 7.05 “LANDSCAPING REQUIREMENTS” BY ADDING SECTION 7.05.6 “IRRIGATION PLAN REQUIREMENTS” RELATING TO THE PERMITTING AND INSTALLATION OF CERTAIN IRRIGATION SYSTEMS, AMENDING SECTION 7.09.5 “GENERAL REGULATIONS GOVERNING SIGNS” CORRECTING A SCRIVENER ERROR; AMENDING SECTION 7.03.3 “SCREENING MECHANICAL EQUIPMENT” BY CHANGING THE CAPTION AND ADDING PARAGRAPH 3 TITLED “REFUSE AND RECYCLING COLLECTION ENCLOSURES”; AMENDING SECTION 8.11 “STREET LIGHTS,” PARAGRAPH 2 “RESIDENTIAL STREET LIGHTS” RELATING TO THE DEVELOPER FEE PAID FOR STREET LIGHT INSTALLATION; AMENDING APPENDIX A “DEFINITIONS” TO AMEND THE DEFINITION OF “PERSONAL SERVICE BUSINESS” AND ADD A DEFINITION FOR “MASSAGE ESTABLISHMENT”; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000) DOLLARS FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the Ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all persons interested and in the exercise of its legislative discretion, the City Council has concluded that the Allen Land Development Code Zoning Regulations of the City of Allen, Texas, as previously amended, should be further amended as follows:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. Allen Land Development Code, Section 4.20.2 “Schedule of Principal Uses” is amended by adding “Massage Establishment” to the use table as follows:

RESIDENTIAL USES												TYPE OF USE	NON-RESIDENTIAL DISTRICTS												
R1	R1.5	R-2	R-3	R-4	R-5	R-6	R-7	2F	TH	MF1	MF1		MH	AO	GO	O	LR	SC	LC	GB	CC	IT	LI	HI	CF
													Massage Establishment				X	X	X	X	X				

SECTION 2. Allen Land Development Code, Section 4.20 “Permitted Principal and Accessory Uses” is amended by adding “Message Establishment” to the use table as follows:

	Central Business District	COMMENTS
Message Establishment	X	

SECTION 3. Allen Land Development Code, Sec. 6.03.2 “Private clubs - Operational regulations” is amended to read as follows:

Sec. 6.03.2. - Private clubs—Operational regulations.

1. A private club may not provide service of alcoholic beverages from a drive-in window, curb service, or drive-through service of any kind.
2. Except as provided in paragraph 3, below, a private club shall only provide inside service of alcoholic beverages.
3. A private club may serve alcoholic beverages on the exterior of a restaurant provided such service occurs in an attached patio or garden area accessible by customers only from the main dining area of the restaurant.
4. The private club operator shall maintain a valid state license for the sale of alcoholic beverages.

SECTION 4. Allen Land Development Code, Sec. 6.06 “Supplemental Use Regulations” is amended by adding Section 6.06.16 titled “Message Establishments” to read as follows:

6.06.16 - Message Establishments

1. **Definitions.** For purposes of this Section 6.06.16, the following words and phrases shall have the following meaning:

Hours of operation means the time of day established by this Section 6.06.16 during which a massage establishment may provide a massage to customers and clients.

Massage means and includes any process consisting of kneading, rubbing or otherwise manipulating the skin of the body of a human being, either with the hand or by means of electrical or mechanical instruments or apparatus. The term includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration,

friction, nerve strokes, and Swedish gymnastics. Massage may include the use of oil, lubricant, salt glows, heat lamps, hot and cold packs, or tub, shower, jacuzzi, sauna, steam or cabinet baths.

Regulatory authority shall mean the City's health officer, or designated representative, police chief, or designated representative, or any other city official designated by the city manager.

2. ***General***

- a. Every massage establishment located within the City shall operate in compliance with Chapter 455 of the Texas Occupations Code, as amended, and the Title 16, Chapter 117 of the Texas Administrative Code, as amended.
- b. It shall be unlawful for any person to act as a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate license issued by the State.
- c. A massage establishment must display the State license in a prominent location in the establishment where it is available for inspection by the public.

3. ***Standards of Operation***

- a. It shall be unlawful for any license holder, owner, operator, manager, or employee of a massage establishment located within the City to operate a massage establishment in a manner contrary to the following operational standards:
 - (1) A massage establishment shall employ or contract with only licensed massage therapists to perform massage therapy or other massage services. Documentation of such employment or contract relationship shall be maintained by the massage establishment and made available during an inspection or investigation upon request.
 - (2) A massage establishment shall only operate between the hours of 7:00 a.m. and 10:00 p.m.
 - (3) A massage establishment shall not include any place or room that serves to function as living or sleeping quarters.
 - (4) A detailed list of the various massage procedures, treatment, and services performed in the massage establishment and the respective charge or cost for each shall be in writing and displayed in a prominent location in the massage establishment and made easily accessible and available for inspection by the public.
 - (5) A massage establishment shall not provide any bathing or shower services as a part of massage therapy or other massage services. This includes the use of bathhouses, table showers, cabinet baths, the use of tubs or showers, or any similar services. This section does not prohibit the use of showers by customers in separate dressing rooms or locker rooms.

(6) Administration of any massage treatment must be with in a room or area designated as a treatment room designated on the approved floorplan of the massage establishment.

b. A massage therapist shall always be clothed from the shoulders to the knees while administering massage therapy, other massage services, or in the presence of any customer.

4. ***Sanitation***

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. Each massage establishment shall be maintained in accordance with applicable state sanitary and health codes and regulations governing massage establishments, including, but not limited to, 16 T.A.C. §117.83.

5. ***Records of Treatment***

Every massage therapist providing services in a massage establishment must provide an initial consultation to each client prior to the first massage session and obtain the signature of the client on a consultation document, as required by State law. The massage establishment shall properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records in accordance with State law.

6. ***Facility requirements.***

The facilities of a massage establishment shall comply with each of the following minimum requirements:

a. All massage establishments operating under the authority of this section shall not have the doors to the entrances or exits of the massage establishment locked or obstructed in any way to prevent free ingress and egress of people.

b. A recognizable and legible sign shall be posted at the main entrance of the massage establishment identifying the establishment as a massage establishment and shall at all times have the identifying name of the massage establishment printed on the sign face.

c. At no time shall a treatment room of any massage establishment be partitioned off into smaller rooms or be partitioned off into enclosed or partially enclosed cubicles without submittal and approval of a revised floorplan.

d. All walls, ceilings, floors, pools, showers, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition.

7. ***Inspections***

a. The regulatory authority shall be authorized to inspect any massage establishment at any time to determine or ensure compliance with the provisions of this article.

- b. Massage establishments may be inspected periodically or following receipt of a complaint by the City. Such inspections will be performed to determine compliance with the requirements of this Section 6.06.16 and applicable laws and ordinances.
- c. Whenever necessary to inspect or enforce any of the provisions of this Section 6.06.16, the regulatory authority may enter the building or premises at all reasonable times during the hours of operation to conduct any duty authorized by this Section 6.06.16. A person who operates a massage establishment, or any agent or employee of the operator, commits an offense if the person refuses to permit a lawful inspection of the premises by the regulatory authority during hours of operation. If entry is refused, or, if the owner or other person having charge or control of the building or premises cannot be located, the regulatory authority may exercise any and all enforcement powers granted by law to secure entry.
- d. Proof of compliance with all applicable provisions of the ordinances of the city shall be provided by each massage establishment.

8. ***Exemptions.***

The provisions of this Section 6.06.16 shall not apply to the following:

- a. A person licensed in this state as an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner, or surgical assistant or as a member of a similar profession subject to state licensing while the person is practicing within the scope of the license.
- b. A place of business where a licensed massage therapist practices as a solo practitioner in a manner consistent with Chapter 455 of the Texas Occupations Code, as amended, including home occupations operating in compliance with this Code.
- c. An instructor otherwise approved by the state to teach in an area of study included in the required course of instruction for issuance of a massage therapist license.

9. ***Applicability to existing businesses.***

The provisions of this Section 6.06.16 shall be applicable to all persons in businesses described in this Section 6.06.16 whether the described activities were established before or after the effective date of this Section 6.06.16.

10. ***Enforcement.***

- a. Designated officials of the regulatory authority shall be responsible for enforcing the provisions of this Section 6.06.16.
- b. Failure to comply with the terms of this Section 6.06.16 after receipt of written notice of violation from the City setting out the violation and time to rectify such may result in revocation of the certificate of occupancy issued pursuant to this Code authorizing the operation of a massage establishment.

SECTION 5. Paragraph 1 of Allen Land Development Code, Section 7.03.2 “Exterior façade materials” is amended to read as follows:

1. All main building exterior wall construction materials that are exposed shall be constructed of 100 percent masonry, including but not limited to stone, brick, tiles, concrete masonry units, cast concrete, concrete stucco, etc. Glazing and framed glazing are considered acceptable alternatives. Synthetic stucco (such as exterior insulation and finish system (EIFS)) may be utilized as an architectural accent material, not to exceed ten percent of the exterior surface of any building facade.

SECTION 6. The Allen Land Development Code, Section 7.05 “Landscaping Requirements” is amended by adding Section 7.05.6 titled “Irrigation Plan Requirements” to read as follows:

Sec. 7.05.6 – Irrigation plan requirements

1. No person shall install an irrigation system in the City without first having obtained a permit authorizing such installation from City's Department of Building and Code Compliance. In addition to the permit fee established by the City pursuant to resolution approved by the City Council and such other information as may be required by the Chief Building Official, an application for installation of an irrigation system must be accompanied by a full set of plans setting forth the design and operation parameters of the irrigation system to be installed, which plans must comply with this Section 7.05.6.
2. The City shall provide the applicant with an irrigation system plan review checklist, evaluate the appropriateness of the irrigation system plan, and approve the plans or approve the plans subject to conditions. Irrigation plans must comply with all State of Texas design and installation requirements including, but not limited to, applicable provisions of 30 Texas Administrative Code ~~tit. 30~~, Ch. 344, as amended. In addition, the installation and operation of all irrigation systems must comply with the requirements of the City's Water Conservation Plan, as amended, adopted pursuant to Code of Ordinances Section 14-14.1.
3. In addition to the provisions of 30 Texas Administrative Code Ch. 344, as amended, all new irrigation systems installed within the City shall comply with the following:
 - a. The irrigation plan shall be sealed by a licensed irrigator or Texas registered landscape architect.
 - b. The system must include an automatic controller and sensors that prevent the operation of irrigation during rainfall or in freezing weather.
 - c. All non-turf landscape areas shall be designed with drip irrigation and/or pressure compensating tubing (no above-ground spray).
 - d. All landscaped areas (including areas of turf-grass), regardless of size, located between the sidewalk and curb/pavement edge for any development shall be designed with drip irrigation and/or pressure compensating tubing (no above-ground spray).
 - e. All drip irrigation and/or pressure compensating tubing shall be designed and installed according to manufacturer's specifications. For subsurface installation, application rate shall not exceed 0.21 inches per hour.
 - f. Turfgrass areas utilizing irrigation rotors are to be designed and installed using low-angle nozzles.

- g. Irrigation heads shall be installed to provide maximum distribution uniformity. The system shall be designed and installed to provide a distribution uniformity of 63 percent DU_{LQ} or better.
 - h. The irrigation design shall prevent overspray on impervious surfaces and excessive runoff.
 - i. Irrigation systems that vary from the standards of this Code and are designed to minimize water usage may be reviewed and approved by the city, provided, however, the design and installation requirements must at all times comply with 30 Texas Administrative Code Ch. 344, as amended.
- 4. New irrigation systems, other than irrigation systems installed on single-family lots, shall be designed with drip irrigation and/or pressure compensating tubing (no above-ground spray) in the following areas:
 - a. Landscaped areas (including turfgrass) that are less than ten feet (10.0') in width and adjacent to impervious surfaces.
 - b. Landscape islands with an area of 200 square feet or less.
- 5. All new irrigation systems for single-family homes shall have separate zones for a drip system (drip irrigation and/or pressure compensating tubing) around the foundation.
- 6. For all irrigation systems other than irrigation systems installed on single-family lots, a certified landscape irrigation auditor shall conduct the following required irrigation audits and inspections:
- 7.
 - a. *Installation audit and inspection:* Immediately following installation, an irrigation system audit and inspection shall be required for all new irrigation systems. For new developments, documentation of the audit and inspection shall be submitted to the City prior to issuing a certificate of occupancy. The audit and inspection must include an evaluation of the system distribution uniformity and actual zone precipitation rate. The audit shall be performed according to the latest edition of the Recommended Audit Guidelines, published by the Irrigation Association, 6540 Arlington Boulevard, Falls Church, Virginia 22042-6638. Distribution uniformity shall be measured on the largest turfgrass area zone of the irrigation system. Forms for submission and documentation of audit and inspection information shall be made available by the City.
 - b. *Recurring inspections:* An irrigation system audit and inspection shall be required for irrigation systems, new and existing, shall be submitted to the City once every three years, and shall be conducted in the same manner as set forth in subparagraph a., above, regarding the installation audit and inspection. The City shall establish a timeline and procedures for all developments to submit irrigation system audit and inspection documentation to the City for review. Forms for submission and documentation of inspection information shall be made available by the City.
- 8. The portion of an irrigation system being expanded or replaced shall comply with the requirements of this Section 7.05.6 if:

- a. The existing irrigation systems is expanded to provide irrigation coverage of an additional land area greater than 25 percent of the land area covered by the existing irrigation system; or
- b. The portion of the existing irrigation system being replaced provides irrigation coverage for more than 25 percent of the land area covered by the system.

SECTION 7. Paragraph 3 of Allen Land Development Code, Section 7.09.5 “General regulations governing signs” is amended to read as follows:

- 3. All permanent signs located in the central business district shall comply with the requirements of Table 7.23 for maximum height, maximum allowable area, maximum number of signs, and minimum spacing and setback requirements

SECTION 8. Allen Land Development Code, Section 7.03.3 is amended to changing the caption to read “Screening Mechanical Equipment and Refuse Enclosures” and by adding paragraph 3 to read as follows:

- 3. *Refuse and Recycling Collection Enclosures*
 - a. *Approval process.* The location of refuse and recycling collection areas shall be approved on a site plan, submitted in accordance with Section 6.05. Any modifications to refuse and recycling collection areas, or additions of refuse and recycling containers or compactors, shall require approval of an amended site plan and/or building permit. No business may receive a Certificate of Occupancy until the construction of the required enclosure is complete.
 - b. *Location.* Refuse and recycling collection areas shall not be located in front of the main building and shall be screened from public view.
 - c. *Access.* Sufficient vehicle access, clearance, and visibility shall be provided as follows:
 - i. A minimum unobstructed approach must be provided in front of each serviced container in accordance with the City of Allen Commercial Trash and Recycling Guidelines.
 - ii. All collection areas and approaches must be on flat level surfaces and designed to accommodate the weight of all equipment and vehicles to service the container.
 - iii. A vehicle maneuvering diagram may be required to demonstrate sufficient vehicle access.
 - d. *Enclosure design.* Refuse and recycling enclosures shall be designed as follows:
 - i. All refuse and recycling containers shall be screened with an eight (8) foot masonry wall enclosure. Screening enclosures shall visually and aesthetically compliment the building materials of the primary building located on the same lot or parcel.
 - ii. Refuse and recycling collection enclosures shall contain permanent walls on three (3) sides. Pedestrian entries with solid doors may be incorporated into these walls.

- iii. The service opening should not directly face any public right-of-way or any residentially zoned property. The service opening shall incorporate a solid metal gate to visually screen the dumpster or compactor.
- iv. Refuse and recycling collection enclosure doors cannot open into or obstruct the fire lane, access easement, or utility easement.
- v. All drains located inside an enclosure must be connected to the sanitary sewer system through a grease trap. Water connections in or adjacent to the enclosure will only be allowed if the enclosure is plumbed to the sanitary sewer through a grease trap. Trash enclosures with drains must be designed to prevent any rainfall that falls outside the enclosure from entering the sanitary sewer system.
- vi. Enclosures must be designed to accommodate the storage and servicing of all applicable refuse and recycling containers in compliance with the City of Allen Commercial Trash and Recycling Guidelines.

SECTION 9. Allen Land Development Code, Section 8.11 “Street Lights”, Subsection 2 “Residential Street Lights” is amended by amending paragraph f. to read as follows:

f. Developer cost:

- i. All residential street lighting shall be installed at the sole expense of the developer. Developers shall pay a fee to the City of Allen Engineering Department, which is estimated to be equal to the first two years (24 months) power consumption cost. The amount of the fee to be paid shall be determined by the following formula:

$$FA = 24 \times M \times F$$

Where:

FA = Fee amount.

M = Monthly charge per fixture (as determined by the Director of Engineering).

F = Number of light fixtures

SECTION 10. Allen Land Development Code, Appendix A “Definitions” is as follows:

- A. The definition of the phrase “Personal Service Business” is amended to read as follows:

Personal service business means an establishment providing individual services related to personal needs directly to customers at the site of the business, or that receives goods from or returns goods to the customer that have been treated or processed at that location or another location. Specific use types include, but are not limited to: barbershop, beauty shop, tanning salons, permanent cosmetics, and nail salons.

- B. A definition for the phrase “Massage Establishment” is added to read as follows:

Massage establishment means a place of business that advertises or offers massage therapy or other massage services, whether with or without the use of mechanical, therapeutic or bathing devices, and is licensed by the state of Texas in accordance with Chapter 455 of the Texas Occupations Code, and Title 25 of the Texas Administrator, as amended. This term does not include beauty parlors or barber shops duly licensed by the state; or treatment by a duly licensed medical doctor, chiropractor, or physical therapist.

SECTION 11. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Allen and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling

SECTION 12. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, or the Allen Land Development Code, as amended hereby, which shall remain in full force and effect.

SECTION 13. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 14. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Allen Land Development Code, as amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 15. This ordinance shall take effect immediately from and after its passage and publication in accordance with its provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 28TH DAY OF AUGUST 2018.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(kbl:8/1/18:101440)

Shelley B. George, TRMC, CITY SECRETARY