

## Proposed Amendments to the Allen Land Development Code

### 1. Massage Establishments

Massage establishments are regulated by the State through the Texas Department of Licensing and Regulations. The State's regulations are fairly comprehensive covering sanitation and operational requirements. All massage establishments are required to be licensed by the State and meet their requirements. However, enforcement of the State regulations by the State is very limited. Therefore, many cities have adopted local ordinances that give the city the authority to enforce these standards.

The purpose of this amendment is to give the City authority to enforce basic operational and sanitation standards. A majority of the regulations in this proposed ordinance mirror the language and requirements established in State law. Therefore, massage establishments should already be meeting most of these requirements. In addition to the State's requirements, this amendment establishes Massage Establishment as a separate use, so they can be identified as CO's are issued, and this amendment adds a couple of local requirements, such as hours of operation, that are intended to help address issues.

Some cities have gone farther, requiring massage establishment to get business licenses and implementing a regular inspection program. Staff **is not** proposing that level of regulation.

This amendment was initiated due to issues experienced by the Police Department with some existing businesses. These amendments are intended to help the City address issues with businesses that are not operating in compliance with State law, while at the same time not creating additional burdens for lawful massage establishments.

Amending Sec. 4.20. "Permitted principal and accessory uses" by adding "Massage Establishment":

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	MF12	MF18		MH	AO	GO	O	LR	SC	LC	GB	CC	IT	LI	HI	CF
																		X	X	X	X	X			

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Section 4.20.4 "Schedule of principal uses central business district"

	Central Business District	COMMENTS
Massage Establishment	X	

Amending Appendix A “Definitions” to amend “Personal service business” and to add “Massage establishment” 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 ~~and unlicensed / non-medical massage therapy~~.

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*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.

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**Provisions below highlighted in blue would be City requirements that are in addition to State law.**

Amending Sec. 6.06 “Supplemental Use Regulations” to add 6.06.14. – Massage Establishments to read as follows:

a. Definitions

*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 health officer, or designated representative, police chief, or designated representative, or any other city official designated by the city manager.

b. General

- i. Any massage establishment shall operate in compliance with Chapter 455 of the Texas Occupations Code and the Administrative Rules of the Texas Department of Licensing and

Regulation 16 Texas Administrative Code, Chapter 117 (Massage Therapy Program Administrative Rules).

- ii. 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.
- iii. A massage establishment must display the State license in a prominent location in the establishment where it is available for inspection by the public.

c. Standards of Operation

It shall be unlawful for any license holder, owner, operator, or manager of a massage establishment to do or commit any of the following prohibited acts, fail to comply with the following standards, or knowingly permit any employee to do so. It shall further be unlawful for any employee or customer of a massage establishment to do or commit any of the following prohibited acts or fail to comply with the following standards, where herein imposed upon them.

- i. A massage establishment shall employ or contract with only licensed massage therapists to perform massage therapy or other massage services. Documentation of the employment or contract relationship shall be maintained by the massage establishment and made available during an inspection or investigation.
- ii. A massage therapist shall be clothed from the shoulders to the knees at all times while administering massage therapy, other massage services, or in the presence of any customer.
- iii. A massage establishment shall conduct all services in accordance with Chapter 455 of the Texas Occupations Code.
- iv. A massage establishment shall only operate between the hours of 7:00 a.m. and 10:00 p.m. (hours of operation).
- v. A massage establishment shall not include any place or room that serves to function as living or sleeping quarters.
- vi. 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.
- vii. 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.

d. 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 Section 117.83 of the Administrative Rules of the Texas Department of Licensing and Regulation.

e. Records of treatment

Licensees 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 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.

f. Facility requirements.

A massage establishment shall comply with each of the following minimum requirements:

- i. All massage establishments operating under the authority of this article 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.
- ii. A recognizable and legible sign shall be posted at the main entrance identifying the establishment as a massage establishment. Such sign shall be in compliance with the sign regulations of the city and shall at all times have the identifying name of the massage establishment printed on the sign face.
- iii. It shall be unlawful for any massage establishment or employee or owner of such establishment to permit its employees to administer a massage in any room or area that is not a treatment room designated on the approved floorplan. It shall be unlawful for any treatment room of any massage establishment to be partitioned off into smaller rooms or to be partitioned off into enclosed or partially enclosed cubicles without submittal and approval of a revised floorplan.
- iv. 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.

g. Inspections

- i. 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.
- ii. Massage establishments may be inspected periodically and as a result of a complaint. These inspections will be performed to determine compliance with the requirements of this article and applicable laws and ordinances.
- iii. Whenever necessary to inspect or enforce any of the provisions of this article, 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 article. 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 a representative of the city at any time it is occupied or open for business. 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.

- iv. Proof of compliance with all applicable provisions of the ordinances of the city shall be provided by each massage establishment.

#### h. Exemptions.

The provisions of this chapter shall not apply to the following:

- i. 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.
- ii. 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, including home occupations operating in compliance with the Allen Land Development Code.
- iii. 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.

#### i. Applicability to existing businesses.

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

#### j. Enforcement.

- i. Designated officials of the regulatory authority shall be responsible for enforcing the provisions of this article.
- ii. The city may exercise any and all enforcement powers granted by law in enforcing the provisions of this article.
- iii. Failure to comply with the terms of this article 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 under this article.

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## 2. Private Clubs

In the current ordinance, Private Clubs are not allowed to have outdoor patios. This is an old provision that was in place before the City's referendum to allow alcohol sales. This change allows private clubs, such as Bar Louie, to have an outdoor patio.

Amending Sec. 6.03.2 "Private clubs - Operational regulations" to read as follows:

1. A private club may not provide ~~inside~~ service ~~only~~ with ~~no a~~ drive-in, curb service, or drive-through service, ~~or outdoor service~~, of any kind.
2. A private club shall provide inside service only. However, service shall be permitted in an attached patio or garden provided that such areas are accessed only from the main dining area of the restaurant.
- ~~2. Serving bars in private clubs shall not be visible from the closest street right of way.~~
- ~~3. Any club or lounge room shall be designed such that patrons can only enter from an area within the primary use; i.e., lobby, waiting area, dining room, etc. Emergency exits direct to the outside are permitted.~~
- ~~4. There shall be no exterior signs or window signs advertising the sale of alcoholic beverages, provided this does not prohibit using established trademark.~~
- 5.3. The operator shall maintain a valid state license for the sale of alcoholic beverages.

## 3. Refuse Enclosures

The City, in coordination with CWD, provides guidelines for the locating and installation of dumpster enclosures, however, the requirements are not clearly established in the ALDC. This amendment adds those requirements to the ALDC to assist developers and staff.

Amending Sec. 7.03.3 "Screening mechanical equipment and refuse enclosures" to add (3) "Refuse and Recycling Collection Enclosures" 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 primary building materials.
- 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.

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#### 4. Exterior Facade

This is a correction to the spelling of EIFS.

Amending Sec. 7.03.2 “Exterior facade materials” 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 finish and insulation system (EFIS)~~ 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.

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#### 5. Irrigation

This includes minor clarifications to the application of this provision to single-family homes, and references to state law.

Adding Sec. 7.05.6 “Irrigation plan requirements” to read as follows:

1. No person shall install an irrigation system in the city without first having obtained a permit authorizing such installation from the office of the city's department of building and code compliance. In addition to the permit fee established by the city 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, shall evaluate the appropriateness of the irrigation system plan, and shall approve the plans or approve the plans subject to ~~stipulations~~conditions. Irrigation plans must comply with all State of Texas design and installation requirements including, but not limited to, applicable provisions of ~~V.T.C.A. 30 Texas~~, Administrative Code ~~tit. 30,~~ Ch. 344. In addition, the installation and operation of all irrigation systems must comply with the requirements of the city's water conservation ordinance, as amended, as described in the Code of Ordinances section 14-14.1.
3. In addition to the provisions of ~~V.T.C.A. 30 Texas~~ Administrative Code ~~tit. 30,~~ Ch. 344, as amended, all new irrigation systems shall meet the following requirements:
  - 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 V.T.C.A. 30 Texas Administrative Code ~~tit. 30, Ceh.~~ 344, as amended.
4. New irrigation systems, excluding single-family lots, for non-single family developments 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 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, excluding single-family lots, Aa certified landscape irrigation auditor shall conduct the following required irrigation audits and inspections:
- 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 ~~all~~ irrigation systems, new and existing, ~~in non single family developments~~ and 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.

7. When existing irrigation systems are expanded by more than 25 percent (25 percent of the land area covered by the system); or more than 25 percent (25 percent of the land area covered by the system) of the irrigation system is replaced, the portion being expanded or replaced shall meet the requirements of this Code.

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## 6. Signs

This is a correction to a table reference.

Amending Sec. 7.09.5 “General regulations governing signs” to read as follows:

- 3. All permanent signs located in the central business district shall comply with the requirements of Table 7.2~~3~~<sup>4</sup> for maximum height, maximum allowable area, maximum number of signs, and minimum spacing and setback requirements

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## 7. Street lights fee

This clarifies that these funds are collected as a fee and not an escrow. These funds have been collected for years as a fee, however, the ordinance refers to it as an escrow.

Amending Sec. 8.11 “Street Lights”, (2) “Residential street lights” to read as follows:

### 2. Residential street lights

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- f. Developer cost:
  - i. All residential street lighting shall be installed at the sole expense of the developer. Developers shall also ~~escrow an amount with~~ 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 fee amount ~~to be escrowed~~ shall be determined by the following formula:

$$\text{FEA} = 24 \times M \times F$$

Where:

$\text{FEA}$  = ~~Eserow-Fee~~ amount.

$M$  = Monthly charge per fixture (as determined by the director of engineering).

$F$  = Number of light fixtures