



---

CITY COUNCIL MEETING AGENDA  
REGULAR MEETING  
TUESDAY, APRIL 25, 2017

**CONTINUATION - BOARD OF APPEAL AND EQUALIZATION MEETING TIME:  
6:45 PM**

1. Call to Order
2. David Thomsen, Appraiser from Hennepin County Assessor's Office – Presentation for the Board of Appeal and Equalization Meeting.
3. Open/Misc.
4. Adjourn.

**CITY COUNCIL MEETING TIME: 7:30 PM**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. \*\*\*\*Consent Agenda\*\*\*\*

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of minutes from the April 11, 2017 Joint City Council Meeting.
  - b. Approval of minutes from the April 11, 2017 Board of Appeal and Equalization Meeting.
  - c. Approval of minutes from the April 11, 2017 Regular City Council Meeting.
  - d. Approval of Accounts Payable; Checks Numbered 17073-17102.
5. Set Agenda – Anyone Not on the Agenda can be Placed Under Open/Misc.
  6. Reports of Boards and Committees by Council and Staff.

7. Preliminary Ordinance Discussion:
  - a. Massage Parlor Ordinance – Discussion relating to possible update to the City’s massage parlor ordinance based on recommendation of West Hennepin Public Safety.
  - b. Predatory Offender Ordinance – Discussion relating to possible adoption of a predatory offender dwelling location restriction ordinance.
8. Community Survey – Discuss Draft Survey.
9. Adjourn.

MINUTES OF A JOINT MEETING OF THE  
INDEPENDENCE CITY COUNCIL AND MAPLE PLAIN CITY COUNCIL  
TUESDAY, APRIL 11, 2017 –6:00 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a joint meeting of the Independence City Council and Maple Plain City Council was called to order by Mayor Johnson at 6:00 p.m.

2. PLEDGE OF ALLEGIANCE.

Officers Ebeling and Geddes led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Independence Mayor Johnson and Maple Plain Mayor Maas-Kusske. Independence Councilors Betts, Grotting, McCoy and Spencer. Maple Plain Councilors Broda, Cahill and Fay. DeLuca arrived late at 6:15 p.m.

ABSENT: None

STAFF: Independence City Administrator and City Planner Kaltsas, Independence City Attorney Vose and Administrative Assistant Horner. Maple Plain City Administrator Schoen and WHPS Director Kroells

VISITORS: Ann Reese, Ellen Finn and Jane Schoen

4. WEST HENNEPIN PUBLIC SAFETY DIRECTOR GARY KROELLS INTRODUCTION AND PRESENTATION.

a. Swearing-in of Officer Ebeling and Officer Geddes.

Johnson said it was a very special with the swearing in of the new officers. Maas-Kusske said it was an honor to be at the meeting on behalf of the residents of Maple Plain and a joy to take part in this swearing in ceremony. Kroells said it is an honor to welcome the two newest members to the police department. He noted staff is the most valuable resource at West Hennepin Public Safety. Kroells stated the department works as a team and supports each other through ongoing training. He noted candidates are selected by staff and City Council after careful consideration. Kroells noted the mission statement of West Hennepin Public Safety is to serve the citizens of Independence and Maple Plain with professionalism and compassion. He said the officers are extraordinary and do have compassion in difficult situations. Kroells noted the core values that serve as a foundation and form the basis of all functions of West Hennepin Public Safety as we fulfill our mission:

*Honor* *Courage* *Common Sense* *Respect & Dignity* *Loyalty* *Fairness* *Trust*

Kroells discussed the lengthy interview process and background checks candidates are vetted though. He said on the fast track it is a 4-5 month process. Kroells introduced Officer Aaron Geddes and Officer Shawn Ebeling and their family members.

Officer Ebeling is trained as a paramedic as well as having his criminal justice degree and has nine years of experience at Cottage Grove. He has nine years of patrol experience and is a drug recognition expert, fire arms instructor, detective and field expert.

Officer Geddes grew up in Plymouth, MN and joined the Police Explorers program as a teen where he graduated to a Sergeant role. He was a reserve with the Minnetrista police department and has a degree in Criminal Justice. Geddes started his career in North Dakota where he quickly ran up the ranks and became a patrol corporal officer.

Kroells led the oath of office and both Officer Geddes and Officer Ebeling were officially sworn in as West Hennepin Public Safety Officers. Sergeant Dennison presented the Officers with their badges.

Kroells thanked everyone for coming out for this special celebration. Mayor Mass-Kusske on behalf of the City of Independence and Maple Plain thanked the Officers for their service and dedication to the two cities.

5. ADJOURNMENT

**Motion by Mass-Kusske to adjourn the Joint Council Meeting at 6:20 p.m. Ayes: Ayes: Johnson, Betts, Fisher, Grotting, McCoy, Spencer, Broda, Cahill, Fay and DeLuca Nays: None. Absent: None. MOTION DECLARED CARRIED.**

Respectfully submitted,

---

Trish Bemmels, Recording Secretary

DRAFT



---

-BOARD OF REVIEW AND APPEAL- MINUTES  
TUESDAY, APRIL 11, 2017  
7:00 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof, an appeal meeting of the Independence City Council/ Board of Review was called to order by Mayor Johnson at 7:00 p.m.

2. ROLL CALL

PRESENT: Mayor Johnson, and Councilors Betts, Grotting, McCoy and Spencer  
ABSENT: None  
STAFF: City Administrative Assistant Horner, City Administrator Kaltsas  
VISITORS: Melissa Potter, Dave Thomsen, Ken Koziol, Carol Roberts, Lynn Wells, Nancy Buckholz, Andrea Picon, Rob Sievers, Lynda Franklin, James Conely, Mary Bellingham

3. Board of Appeal –

1. Ken Koziol- visitor/ observer.
2. Carol Roberts (4672 S. Lake Sarah Dr.) said her concerns had been addressed. She said Thomsen answered all her questions and was very knowledgeable.
3. Lynn Wells (2245 Old Post Rd.) said she wants to understand her valuation amount. She said she has a 1973 house and not much has been done to it but the value went up drastically. Johnson said it would be good to let the assessor go through the home before the next meeting so it could be accurately evaluated.
4. Nancy Bucholtz (2676 Co. Rd. 90) said she believes the assessor was at her house and she is confused by the valuation. She noted their value went up 21% and they have only maintained the building structure. She said they do have leakage in their crawl space.
5. Andrea Picon (6550 Olstad Dr.) said she is educating herself on this process. Her question was on the year to year taxable market change. She

noted the wide tax ranges from year to year. Thomsen noted the quality of the house was revalued as originally it was incorrect.

6. Rob Sievers (1160 Co. Rd. 83) said he was building a new house behind his other house. He said the assessors said he had three buildings on his property when one was a tear down. Sievers said it was also changed to Agriculture from Rural Residential and should be taxed as such.
7. Lynda Franklin (6615 Franklin Hills Rd.) – not present
8. James Conely (4530 S. Lake Sarah Dr.) -observing
9. Mary Bellingham (2616 Co. Rd. 90) wondered how her value was determined. She said she was told it was based off of comparable property.

#### 4. Recess

1030 Co. Rd. 83  
1015 Drake Court  
“vacant” 01-118-24-21-0005  
“vacant” 01-118-24-21-0001  
4672 Lake Sarah Dr. S  
6390 Co. Rd. 11  
6775 Fogelman Rd.  
5112 S. Lakeshore Dr.  
3175 Co. Rd. 90  
2825 Co. Rd. 90  
3145 Co. Rd. 92  
2585 Valley Rd.  
1985 Copeland Rd.  
1030 Marsh Ridge Circle  
“vacant” -01-118-26-32-0004  
872 Co. Rd. 92  
4825 Co. Rd. 6

**Motion by McCoy, second by Betts to close appeal process to new reviews. Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

**Motion by Grotting, second by Spencer to recess until April 25, 2017 at 6:45 p.m. Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.**

---

Trish Bemmels, Recording Secretary

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, APRIL 11, 2017 –7:45 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 7:45 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Betts, Grotting, Spencer and McCoy

ABSENT: None

STAFF: City Administrative Assistant Horner, City Administrator Kaltsas, City Attorney Vose

VISITORS: James Conely, Rob Sievers, Jay Lorek, Steve Burns

4. \*\*\*\*Consent Agenda\*\*\*\*

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council minutes from the March 28, 2017 Regular City Council Meeting.
- b. Approval of Accounts Payable; Checks Numbered 17047-17072. 17047 was reissued as a new check due to a vendor not cashing the check within 90 days of the initial issuance. The initial payment had been approved by the Council on 9.27.2016.
- c. RESOLUTION 17-0411-03 Approving a Change to the Vacation Time Policy.

**Motion by McCoy, second by Grotting to approve the Consent Agenda. Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent:None. MOTION DECLARED CARRIED.**

5. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.

Steve Burns asked to be put on the agenda to address a culvert issue.

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

**Spencer attended the following meetings:**

- Met with the Watershed Board with Joe Baker
- Delano Vigil
- Public Works Interviews
- Planning Commission Meeting
- 2040 Comp Plan Kick-off Meeting

- Emergency Management Meeting
- Citizens Police Academy Graduation
- Lake Sarah Improvement Association Spring Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbing
- Board of Review and Appeal Meeting

**Grotting attended the following meetings:**

- Sensible Land Use Coalition Luncheon
- Minnesota Homeland Security Disaster Training
- Citizens Police Academy Graduation
- Citizens Police Academy K9 Training
- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbing

**McCoy attended the following meetings:**

- Highway 12 Coalition Meeting
- Speaker at Teen Challenge Event
- Presented at Orono Forensics Class
- Planning Commission Meeting
- Empty Bowls Fundraiser at Orono
- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbing
- Long Lake Fire Department Pancake Breakfast

**Betts attended the following meetings:**

- Police Commission Meeting
- Citizens Police Academy Graduation
- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbing

**Johnson attended the following meetings:**

- Sensible Land Use Coalition Luncheon
- Senior Community Services Board Meeting
- Citizens Academy Canine Training
- Citizens Academy Graduation
- Met with Auditors
- Met with a couple people from Haven Homes
- Long Lake Fire Department Pancake Breakfast
- Regional Council of Mayors Meeting
- Fire Commission Meeting
- Sun Country Airlines Ceremony
- West Hennepin Chamber of Commerce Meeting
- Mediacom Open House
- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbing



**Horner attended the following meetings:**

- Board of Review and Appeal Meeting
- Joint Council Meeting with Maple Plain and Ceremony for Officers Geddes and Ebbing

**Kaltsas attended the following meetings:**

7. JAMES AND ALISON CONELY (APPLICANT/OWNER’S) REQUEST THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 4530 LAKE SARAH DRIVE SOUTH (PID NO. 02-118-24-24- 0020 IN INDEPENDENCE, MN):

- a. RESOLUTION 17-0411-01 Considering approval of a variance to allow a reduced front and side yard setback. The setback reductions would permit the construction of a third garage stall attached to the existing garage.

Spencer spoke on behalf of Kaltsas: He said the applicant is seeking approval to construct an addition (third stall) onto the existing detached garage. The garage addition would be 17 feet wide by 30 feet in length. The property is located at the intersection of Shady Beach Circle and South Lake Sarah Drive and therefore is subject to the recently adopted corner setback provisions of the ordinance. The existing garage is located on the property such that the angle prevents the addition of a third garage stall from meeting both the front yard (setback from South Lake Sarah Drive) and corner yard setbacks (setback from Shady Beach Circle).

The ability of the owner to expand the garage is limited by the current location and its proximity to the adjacent property lines. In reviewing the property, it does not appear that there is a logical alternative solution to expanding the garage in an area that meets all requisite setbacks. The proposed garage expansion would have the following setbacks:

Front Yard Setback:

Required: 85 feet from centerline or 51 feet from the ROW.

Proposed: 38 feet from the right of way (variance of 13 feet)

There are several factors to consider relating to granting a variance. The City’s ordinance has established criteria for consideration in granting a variance.

520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, “practical difficulties” means:

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;

(b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;

(c) the variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)

Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)

520.23. Conditions and restrictions. The board of adjustments may recommend and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)

Consideration of the criteria for granting a variance:

- a. Residential use of the property is consistent with the Rural Residential District. The applicants are seeking a variance that is generally consistent with similar variances granted for properties in this area.
- b. Many of the properties in this area have setbacks from the right of way or side property lines that do not meet the required setbacks.
- c. The character of the surrounding area is residential. The proposed garage expansion for a single-family home is in keeping with the City's comprehensive plan.

There are several additional items that could be considered by the City:

1. Many of the surrounding properties have been granted relief from the requisite setback requirements due to the small size of the properties, unique lot layouts resulting from the historic nature of the structures on the properties and the change in nature of the homes from seasonal to permanent.
2. The neighboring property owner directly across Shady Beach Circle that would have the most visibility of the garage expansion has submitted a letter to the City stating that they have no problem with the requested variance.
3. The property across Shady Beach Circle is setback 20 feet from the right of way line.
4. The property has a fairly extensive vegetative screen that would further mitigate potential impacts of the proposed garage (see pictures attached).

Ultimately the City will need to find that the aforementioned criteria for granting a variance have been met by the applicant.

The City received a letter from the neighboring property owner located at 450 Shady Beach Circle supporting the variance request. No comments were made during the public hearing.

Planning Commissioners considered the request for a variance to allow the expansion of the existing garage. Commissioners asked if the existing screening provided adequate screening year round and would remain intact following completion of the garage addition. It was noted that the screening would remain in place following completion of the garage addition. Commissioners asked if there were any intersection visibility issues due to the existing vegetation near the intersection of Shady Beach Circle and Lake Sarah Drive South. Staff noted that they had visited the site and did not find any visibility issues resulting from the existing vegetation. Staff also stated that they were not aware of any concerns or complaints being submitted to the City recently or historically relating to the existing vegetation.

Commissioners discussed that several properties in this area have reduced setbacks from the City's right of way. Commissioners ultimately found that the criteria for granting a variance were met and recommended approval to the City Council.

The Planning Commission recommended approval of the request for a variance with the following findings and conditions:

1. The proposed Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The variance shall allow a reduced front and corner yard setback as follows:  
Front Yard Setback:  
Required: 85 feet from centerline or 51 feet from the ROW  
Permitted: 38 feet from the right of way (variance of 13 feet)  
  
Corner Yard Setback:  
Required: 51 feet from the ROW  
Permitted: 37 feet from the right of way (variance of 14 feet)
3. The applicant shall submit a drainage plan to the City at the time of building permit application. The drainage plan will be reviewed by the City to ensure that the proposed improvements do not adversely impact any of the surrounding properties or right of way relating to grading and drainage.
4. The Applicant shall pay for all costs associated with the City's review of the requested variance.
5. Any future improvements made to this property will need to be in compliance with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts. No expansion of the home/ garage or impervious areas will be permitted without an additional variance request.

Vose explained the process and that this property was not unlike other properties where

exceptions were made for additions such as this. Betts asked about the driveway. Vose noted the aerial is more current than the survey shows.

**Motion by McCoy, second by Grotting to approve RESOLUTION 17-0411-01- considering approval of a variance to allow a reduced front and side yard setback. The setback reductions would permit the construction of a third garage stall attached to the existing garage. Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent:None. MOTION DECLARED CARRIED.**

7. JAY LOREK (APPLICANT/OWNER) REQUESTS THAT THE CITY CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LOCATED AT 990 COUNTY ROAD 92 N (PID NO. 28-118-24-33-0008) IN INDEPENDENCE, MN:

- a. A Conditional Use Permit to allow an accessory dwelling unit to be located within the existing detached accessory building on the subject property.

The property is located on the east side of County Road 92 North and south of Turner Road. The property is mostly upland and has one detached accessory building and a small shed.

Property Information: 990 County Road 92 N  
Zoning: Agriculture  
Comprehensive Plan: Agriculture  
Acreage: 4.85 acres

Vose spoke on behalf of Kaltsas and said that several years ago, the City adopted an ordinance permitting accessory dwelling units as a conditional use in both Rural Residential and Agriculture zoning districts. The intent of the ordinance was to allow for “mother-in-law” type units to be located within the principle structure or a detached accessory building. The applicant is seeking a conditional use permit to allow an accessory dwelling unit inside of a portion of the existing detached accessory structure on the property. The detached accessory structure is currently utilized as both a garage and unfinished all-purpose space. The applicant currently houses his elderly father within his existing home. He would like to finish a portion of the detached accessory structure into a “studio” (open floor plan) type dwelling unit. The proposed unit would have a living space/bedroom, full bath and kitchen facilities. There would be a separate access into the unit from the outside. The proposed accessory structure would be used a true “mother in law” unit.

The subject property has an existing principle home and several small accessory buildings on the property. In order to allow an accessory dwelling unit, the applicant will need to demonstrate how they meet all applicable criteria for granting a conditional use permit. The City has criteria broadly relating to Conditional Use Permits and then more focused criteria relating specifically to accessory dwelling units.

An accessory dwelling unit must meet the following criteria:

Subd. 2. "Accessory Dwelling Unit." A secondary dwelling unit that is:

- (a) Physically attached to or within a single-family dwelling unit or within a detached

accessory building that has a principal structure on the parcel; and

The applicant is proposing to construct the accessory dwelling unit within an existing detached accessory structure.

- (b) Subordinate in size to the single-family dwelling unit; and

The proposed accessory dwelling unit would be subordinate in size to the single family dwelling unit.

- (c) Fully separated from the single-family dwelling unit by means of a wall or floor, with or without a door; and

The proposed accessory dwelling unit would be separated from the single-family home.

- (d) Architecturally compatible with the principal structure (using materials, finishes, style and colors similar to the principal structure); and

The proposed accessory structure is existing and appears to generally complement the principle home on the property.

- (e) The lesser of 33% of the above ground living area of the principal structure or 1,200 square feet, and no less than 400 square feet; and

The principal structure has ~1,575 square feet of above ground space not including the basement. 33% of 1,575 square feet equals 520 square feet. The applicant is proposing to construct an accessory structure which will total 513 square feet. The proposed square footage would be equal to the permitted maximum square feet.

- (f) Not in excess of the maximum square footage for accessory structures as permitted in this code; and

The maximum accessory structure size for properties zoned Agriculture is 2% of the buildable (upland) lot area. The applicant has 4.85 acres and is allowed a total accessory structure size of 4,223 SF. The existing building is approximately 2,000 SF and therefore would comply with applicable standards.

- (g) Has permanent provisions for cooking, living and sanitation; and

The applicant is proposing to construct permanent provisions for cooking; living and sanitation (see attached depiction).

- (h) Has no more than 2 bedrooms; and the applicant is proposing to have one bedroom within the accessory dwelling unit.

(i) Limited to relatives of the homesteaded owner occupants or the homesteaded owners of the principal structure. The total number of individuals that reside in both the principal dwelling unit and accessory dwelling unit may not

exceed the number that is allowed by the building code; and the applicant is proposing that the accessory dwelling unit be occupied solely by family members.

- (j) Uses the existing on-site septic system<sup>b</sup> or an approved holding tank; and

The property has an existing septic system that was designed for a four (4) bedroom home. The existing home has three (3) bedrooms. The City has reviewed the septic system and found that it is able to accommodate the proposed bedroom.

- (k) Respectful of the future subdivision of the property and the primary and secondary septic sites. The City may require a sketch of the proposed future subdivision of a property; and

The detached accessory building is a conforming structure that is currently in existence.

- (l) In compliance with the adopted building code relating to all aspects of the dwelling unit.

The proposed accessory structure will meet all applicable building codes and will be required to obtain requisite permits.

On lots less than 2.5 acres, the accessory dwelling unit must be attached to the principal dwelling unit or located/constructed within an existing detached accessory structure that meets all criteria of this section.

The existing on-site septic system will be required to be inspected by the City to ensure compliance with all applicable standards. Any system that does not meet all applicable standards shall be brought into compliance as a part of the approval of the accessory dwelling unit.

The location of the existing accessory building and its proximity to the surrounding properties will mitigate potential impacts of converting a portion of the space into an accessory dwelling unit. The surrounding properties are similar in character and have similar sized detached accessory buildings. The accessory dwelling unit will need to meet all applicable building codes and building regulations. The applicant will be required to apply for and receive all applicable and requisite building permits.

As proposed, the accessory dwelling unit appears to meet all applicable criteria established in the zoning ordinance. In addition to the requirements for allowing an accessory dwelling unit, the City has additional criteria which need to be considered for granting a conditional use permit

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other

property in the immediate vicinity for the purposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city from pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed conditional use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

Consideration for the proposed conditional use permit should weigh the impact of having an accessory dwelling unit located on this property. The location of the proposed accessory dwelling unit and its compliance with all applicable setbacks appears to mitigate potential impacts resulting from the construction of the accessory dwelling unit. The City will need to consider if the accessory dwelling unit meets the requirements and criteria for granting a conditional use permit.

Should the CUP to allow an accessory dwelling unit be considered by the City, it is suggested that the following conditions be noted by the City:

- The Conditional Use Permit will be subject to the applicant successfully obtaining and completing a building permit for all applicable improvements required for a dwelling unit.
- The proposed accessory structure cannot be expanded or enlarged without the review and approval of the City. Any expansion will require an amendment to the conditional use permit following all applicable procedures.

Commissioners reviewed the request for a conditional use permit to allow an accessory dwelling unit. Commissioners asked if the existing septic system was in fact properly sized for the proposed additional bedroom. Staff noted that the system had been reviewed and found to be sized correctly to accommodate the proposed additional bedroom. Commissioners asked how the remaining space in the accessory building was going to be configured. It was noted that there is some additional finished space adjacent to the accessory dwelling unit, but there would be a clear separation between the spaces. Commissioners found that the proposed conditional use permit for an accessory dwelling unit meets all applicable criteria and recommended approval to the City Council.

The Planning Commission recommended approval of the requested conditional use permit with the following findings and conditions:

1. The proposed Conditional Use Permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The conditional use permit is to allow an accessory dwelling unit to be located within the existing accessory structure on the property. The criteria for permitting an accessory dwelling unit shall be perpetually satisfied by the owner of the property. Any change in the use of the accessory dwelling not in compliance with the applicable criteria for the accessory dwelling unit will cause the conditional use permit to be revoked by the City.
3. The conditional use permit will be issued subject to the following items being completed:
  - a. The Conditional Use Permit will be subject to the applicant successfully obtaining and completing a building permit for all applicable improvements required for a dwelling unit.
  - b. The proposed accessory structure cannot be expanded or enlarged without the review and approval of the City. Any expansion will require an amendment to the conditional use permit following all applicable procedures.
4. The Applicant shall pay for all costs associated with the City's review of the requested conditional use permit.

**Motion by Betts, second by McCoy to approve a Conditional Use Permit to allow an accessory dwelling unit to be located within the existing detached accessory building on the for the property located at 990 County Road 92 N (PID No. 28-118-24-33-0008). Ayes: Johnson, Grotting, McCoy, Spencer and Betts. Nays: None. Absent:None. MOTION DECLARED CARRIED.**

7. OPEN/MISCELLANEOUS

Steve Burns said on Kutz Crossing and Nelson Road there is a culvert and he wanted to know what the procedure was when this gets clogged. He said he has property has about three feet of water on it from the plugged culvert. He said there is concerned about all the frost heaves in Independence and he has a background in fixing these problems. He offered his suggestions from past experience with Canyon Township.

8. ADJOURN

**Motion by Spencer, second by McCoy to adjourn at 8:23 p.m. Ayes: Johnson, Betts, McCoy, Spencer and Grotting. Nays: None. Absent:None. MOTION DECLARED CARRIED.**

Respectfully Submitted,

---

Trish Bemmels/ Recording Secretary



# City of Independence

## Possible Ordinance Adoption – Massage Services and Predatory Offenders Ordinance

---

*To:* City Council  
*From:* Mark Kaltsas, City Administrator  
*Meeting Date:* April 25, 2017

### ***Request:***

Discuss and provide direction to staff concerning ordinances pertaining to massage services and predatory offenders. Both ordinance would be located within the code of ordinances and require only City Council consideration.

### ***Discussion:***

#### Massage Services

West Hennepin Public Safety has worked with the City of Maple Plain to adopt an ordinance regulating the licensing of massage services parlors. The ordinance was developed following difficulties the City and West Hennepin had with non-legitimate massage parlors. West Hennepin would like the City to consider adopting a similar ordinance for the purpose of regulating the licensing of massage services parlors in Independence.

The basis of the ordinance is to regulate the licensing of individuals and business providing massage services in the City. The City has reviewed the ordinance adopted by the City of Maple Plain and believes that it could adopt similar language in order to regulate licensing of legitimate businesses and individuals. WHPS has reviewed the ordinance and believes that adoption of the ordinance would better protect the City and its residents. Staff is seeking discussion and direction from the City Council relating to the possibility of adopting an ordinance similar to that adopted in Maple Plain. Based on the discussion and direction provided by the City Council, staff would bring back an official ordinance for consideration and adoption.

#### Predatory Offenders Ordinance

Many metropolitan area cities have recently contemplated adopting certain residency location restrictions for predatory offenders. Cities that have adopted local legislation have typically found that such residency location restrictions would be prudent to protect the local health, safety and welfare of their residents. Cities have adopted a relatively standard and consistent model ordinance language as an amendment to local zoning codes.

- Most ordinances restrict Level II and III offenders.
- The model ordinance defines “protected areas” such as schools, playgrounds, parks, and other places children are known to regularly congregate.

- Level II and III predatory offenders would be prohibited from living a certain distance from those protected areas (e.g. 750 feet measured lot line to lot line).
- Ordinances exempt residences which were established by Level II and III offenders prior to adoption of the ordinance.
- Typically, an offender is also allowed to move into a residence with certain relatives (e.g. parents, siblings, spouses, children etc.) regardless of the proximity to a protected location.

The City of Independence Attorney has prepared a draft ordinance based on the model language used by other similar communities. While these residency restriction ordinances can be further customized by cities, there are two factors that are typically needing to pertain to the specific city. Independence will need to consider the type of protected area (i.e. parks, daycare facilities, schools, etc.) and the restricted distance that offenders will be prohibited from living from protected areas.

*Types of Protected Areas:*

The types of protected areas are typically those areas where children commonly congregate. Most cities identify schools, public parks and licensed daycare facilities. Some cities have found other similarly used areas as needing to be defined in the ordinance. Staff did not identify any similar use areas that appear to need further definition in the ordinance.

*Restricted Distance:*

The City can determine the distance from restricted areas that residency of predatory offenders would be restricted. The distances established by the City cannot purposefully restrict the entire City. The general standard adopted by most Cities is 2,000. The 2,000 feet is measured from the outer edge of the restricted properties to the property line of the residential properties. If any portion of a residential property falls within the distance, the entire property becomes prohibited.

Based on the discussion and direction provided by the City Council, staff would bring back an official ordinance for consideration and adoption.

*Recommendation:*

The City Council is being asked to discuss the aforementioned ordinances and provide feedback and direction to staff.

**Attachments:** Draft – Massage Services Ordinance  
Draft – Predatory Offender Ordinance

# DRAFT

## PURPOSE

The purpose of this article of the City Code is to prohibit massage businesses and services to the public except those licensed by the city as therapeutic massage enterprises and massage therapists pursuant to this section. The licensing regulations prescribed herein are necessary in order to protect businesses that are operating legitimate enterprises, to prevent criminal activity, and to protect the health and welfare of the community. The purpose of this section is not to impose restrictions or limitations on the freedom of protected speech or expression.

## FINDINGS

The City Council of the City of Independence makes the following findings regarding the need to license therapeutic massage enterprises and therapists and to prohibit all other types of massage businesses and services to the public:

- (1) Persons who have bona fide and standardized training in therapeutic massage, health, and hygiene can provide a legitimate and necessary service to the general public.
- (2) Health and sanitation regulations governing therapeutic massage enterprises and therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.
- (3) License qualifications for the restrictions on therapeutic massage enterprises and therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.
- (4) Massage services provided by persons with no specialized and standardized training in massage can endanger citizens by facilitating the spread of communicable diseases, by exposing citizens to unhealthy and unsanitary conditions, and by increasing the risk of personal injury.
- (5) Massage businesses which employ persons with no specialized and standardized training can tax city law enforcement services because such businesses are more likely to be operated as fronts for prostitution and other criminal activity than operations established by persons with standardized training.
- (6) The training of professional massage therapists at accredited institutions is an important means of ensuring the fullest measure of protecting the public health, safety, and welfare.

## DEFINITIONS

The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

**ACCREDITED INSTITUTION** means an educational institution holding accredited status with the United States Department of Education.

**ACCREDITED PROGRAM** means a professional massage program accredited by the Commission on Massage Therapy Accreditation (COMTA).

**BUSINESS LICENSEE** means the individual who has obtained a valid therapeutic massage enterprise license from the city, on behalf of himself or herself or on behalf of a business entity, and is designated to be responsible for the enterprise's compliance with all aspects of this section.

**CLEAN** means the absence of dirt, grease, rubbish, garbage, and other offensive, unsightly, or extraneous matter.

**GOOD REPAIR** means free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar defects so as to constitute a good and sound condition.

**ISSUING AUTHORITY** means the City of Independence.

**MASSAGE** means any method of pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, or rolling of the external parts of the human body with the hands or arms with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations.

**MASSAGE THERAPIST** means an individual who practices or administers massage to the public who can demonstrate to the issuing authority that he or she:

- (1) Has current insurance coverage of \$1,000,000.00 for professional liability in the practice of massage;
- (2) Is affiliated with, employed by, or owns a therapeutic massage enterprise licensed by the city; and
- (3) Has completed 500 hours of certified therapeutic massage training with content that includes the subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an accredited program or accredited institution that has been approved by the issuing

authority. These training hours must be authenticated by a single provider through a certified copy of the transcript of academic record from the school issuing the training, degree or diploma.

***OPERATE*** means to own, manage, or conduct, or to have control, charge, or custody over.

***PERSON*** means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

***THERAPEUTIC MASSAGE ENTERPRISE*** means an entity which operates a business which hires only licensed therapeutic massage therapists to provide therapeutic massage to the public. The owner/operator of a therapeutic massage enterprise need not be licensed as a therapeutic massage therapist if he or she does not at any time practice or administer massage to the public. A therapeutic massage enterprise may employ other individuals such as cosmetologists and estheticians, and these individuals are not required to have a massage therapist license as long as they are not providing therapeutic massage to the public.

***WITHIN THE CITY*** means physical presence as well as telephone referrals such as phone-a-massage operations in which the business premises, although not physically located within the city, serves as a point of assignment of employees who respond to requests for services from within the city.

## **LICENSE REQUIRED**

- (a) ***Therapeutic massage enterprise license.*** It shall be unlawful for any person or entity to own, operate, engage in, or carry on, within the city, any type of massage services to the public for consideration without first having obtained a therapeutic massage enterprise license from the city pursuant to this section.
- (b) ***Massage therapist license.*** It shall be unlawful for any individual to practice, administer, or provide massage services to the public for consideration within the city without first having obtained a massage therapist license from the city pursuant to this section.

## **EXCEPTIONS**

A therapeutic massage enterprise or therapist license is not required for the following persons and places:

- (1) Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, provided the

- massage is administered in the regular course of the medical business and not provided as part of a separate and distinct massage business.
- (2) Persons duly licensed by this state as beauty culturists or barbers, provided such persons do not hold themselves out as giving massage treatments and provided the massage by beauty culturists is limited to the head, hand, neck, and feet and the massage by barbers is limited to the head and neck.
  - (3) Places licensed by this state as a “Salon” pursuant to Minnesota State Statute 155A.29, provided such places do not hold themselves out as offering massage treatments and provided the massage by salon employees is limited to the head, hand, neck, and feet.
  - (3) Persons working solely under the direction and control of a person duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry.
  - (4) Places duly licensed or operating as a hospital, nursing home, hospice, sanitarium, or group home established for the hospitalization or care of human beings.
  - (5) Students of an accredited institution who are performing massage services in the course of a clinical component of an accredited program of study, provided that the students are performing the massage services at the location of the accredited institution and provided the students are identified to the public as students of massage therapy. Students of an accredited institution who are performing massage services at clinics or other facilities located outside of the accredited institution must have at least 150 hours of certified therapeutic massage training at the accredited institution prior to performing the therapy outside of the institution, must have proof of liability insurance, and must be identified to the public as a student of massage therapy.

---

## LICENSE APPLICATION

- (a) ***Therapeutic massage enterprise license application.*** An application for a therapeutic massage enterprise license shall be made on a form supplied by the city and shall request the following information:
  - (1) ***All applicants.*** For all applicants:
    - a. Whether the applicant is an individual, corporation, partnership, or other form of organization.
    - b. The legal description of the premises to be licensed together with a plan of the area showing dimensions, location of buildings, street access, and parking facilities.
    - c. The floor number, street number, and rooms where the massage services are to be conducted.

- d. Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.
- e. Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans for design are on file with the city's building and inspection department, no plans need be submitted to the issuing authority.
- f. The name and street address of the business if it is to be conducted under a designation, name, or style other than the name of the applicant, and a certified copy of the certificate as required by Minn. Stat. § 333.02.
- g. The amount of the investment that the applicant has in the business, buildings, premises, fixtures, furniture, and equipment, and proof of the source of such investment. The identity of all other persons investing in the business, building, premises, fixture, furniture and equipment, the amount of their investment and proof of the source of such investment.
- h. All applications for licenses, whether enterprise or individual applications, shall be signed and sworn to. If the application is that of a natural person, it shall be signed and sworn to by such person; if by a corporation, by an officer thereof; if by an incorporated association, by the manager or officer thereof; if by a limited liability company (LLC), by a member thereof. Any falsification of information on the license application shall result in the denial of the license.
- i. The full name, place and date of birth, and street residence address of the designated business licensee along with a color photocopy of the applicant's MN driver's license or MN I.D. front and back, or any other government-issued I.D. If the photocopy is not acceptable to the Director of the West Hennepin Public Safety Department, the department may take photographs for the file.
- j. All applicants shall agree, in writing, to submit to a criminal background check.
- k. Such other information as the City Council or issuing authority shall require.

(2) **Individuals.** For applicants who are individuals:

- a. The full name, place and date of birth, and street residence address of the applicant, who shall also be the designated business licensee,

along with a copy of a valid identification card, as required under (a)(1)(i).

- b. Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used.
- c. Whether the applicant is a citizen of the United States or a resident alien or has the legal authority to work in the United States.
- d. Street addresses at which the applicant has lived during the preceding five years.
- e. The type, name, and location of every business or occupation the applicant has been engaged in during the preceding five years.
- f. Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.
- g. Names and addresses of the applicant's employers for the preceding five years.
- h. Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.
- i. Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is submitted to the issuing authority.
- j. Whether the applicant has ever been engaged in the operation of massage services. If so, applicant shall furnish information as to the name, place and length of time of the involvement in such an establishment.

(3) **Partnerships.** For the applicants that are partnerships: the names and addresses of all general and limited partners and all information concerning each general partner as is required in paragraph (2) of this section of this Code. The managing partners shall be designated and the interest of each general and limited partner in the business shall be disclosed. A true copy of the partnership agreement shall be submitted with the application, and if the partnership is required to file a certificate as to a trade name under Minn. Stat. § 333.02, a certified copy of such certificate shall be submitted. The license shall be issued in the name of the partnership.

(4) **Corporations and other organizations.** For applicants that are corporations or other types of organizations:



- a. The name of the organization, and if incorporated, the state of incorporation.
  - b. A true copy of the certificate of incorporation, and, if a foreign corporation, a certificate of authority as described in Minn. Stat. § 303.02.
  - c. The name of the general manager, corporate officers, proprietor, and other person in charge of the premises to be licensed, and all the information about said persons as is required in paragraph (2) of this section of this Code.
  - d. A list of all persons who own or control an interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all the information regarding such persons as is required in paragraph (2) of this section of this Code.
- (b) ***Massage therapist license application.*** An application for a massage therapist license shall be made on a form supplied by the City Clerk and shall request the following information:
- (1) The applicant's name and current address.
  - (2) The applicant's current employer.
  - (3) The applicant's employers for the previous five years, including the employer's name, address and dates of employment.
  - (4) The applicant's addresses for the previous five years.
  - (5) The applicant's date of birth, home telephone number, weight, height, color of eyes, and color of hair. A color photocopy of the applicant's MN driver's license or MN I.D. front and back, or any other government-issued I.D. If the photocopy is not acceptable to the Director of the West Hennepin Public Safety Department, the department may take photographs for the file.
  - (6) Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense and, if so, the time, place, and offense for which convictions were had.
  - (7) Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is submitted to the issuing authority.
  - (8) The names, resident and business addresses of those residents of the metropolitan area, of good moral character, not related to the applicant or financially interested in the premises of the business, who may be referred to as the applicant's character.
  - (9) Whether the applicant is a U.S. citizen or resident alien or has the legal authority to work in the United States.

- (10) Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used.
- (11) Whether the applicant has met the definition of a massage therapist in section \_\_\_\_\_ of this Code.
- (12) All applicants shall agree, in writing, to submit to a criminal background check.
- (13) Such other information as the City Council or issuing authority shall require.

**LICENSE FEES**

The fees for a therapeutic massage enterprise and therapist licenses shall be as set forth in \_\_\_\_\_ of this Code. An investigation fee shall be charged for therapeutic massage enterprise licenses and an individual therapeutic massage license. Each application for a license shall be accompanied by payment in full of the required license and investigation fees. No investigation fee shall be refunded.

Beginning in 2017, the first year of massage therapy licensing, license fees for new enterprises and individuals shall be pro-rated to one-half the annual fee. Licenses approved for 2017 will be effective June 1 through December 31, 2017. Thereafter the full license fee will be charged on an annual basis regardless of when the application is received. Background investigation fees will not be pro-rated for a new application.

**LICENSE APPLICATION VERIFICATION AND CONSIDERATION**

**(a) *Verification of information in therapeutic massage enterprise license and massage therapist license.***

- (1) All applications shall be referred to the Director of the West Hennepin Public Safety Department, or his or her designee, and such other city departments as the city administrator shall deem necessary for verification and investigation of the facts set forth in the application. The Director, or his or her designee, is empowered to conduct any and all investigations to verify the information on the application, including ordering a computerized criminal history inquiry and/or a driver's license history inquiry on the applicant. The Director, or his or her designee, is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions Computerized Criminal History information system in accordance with BCA policy.

**(b) *Consideration of application.***

- (1) Within a reasonable period after receipt and verification of a complete therapeutic massage enterprise license application or a massage therapist license application and receipt of the applicable fees, the Director, or his or her designee, and other consultants shall make a written

recommendation to the City Council as to the issuance or non-issuance of the license. The City Council may order and conduct such additional investigation as it deems necessary. Upon completion of its investigation, the council shall grant or deny the license. Notice shall be sent by the City Clerk by regular mail to the applicant upon a denial informing the applicant of the right to appeal to the City Council within 20 days. If an appeal is properly made, the matter shall be placed on the next available City Council agenda.

- (2) **Photo I.D. cards.** Photo identification cards shall be issued to individuals receiving a therapeutic massage enterprise license and to those receiving a massage therapist license.

### **PERSONS INELIGIBLE FOR LICENSE**

- (a) **Therapeutic massage enterprise license.** No therapeutic massage enterprise license shall be issued to an individual or entity operated by an individual who:
  - (1) Is not 18 years of age or older at the time the application is submitted to the issuing authority;
  - (2) Has been convicted of any crime directly related to the occupation licensed as prescribed by Minn. Stat. § 364.03, subd. 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by Minn. Stat. § 364.03, subd. 3;
  - (3) Has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is submitted to the issuing authority;
  - (4) Is not a citizen of the United States or a resident alien, or is legally prohibited from working in the United States;
  - (5) Is not of good moral character or repute;
  - (6) Is not the real party in interest of the enterprise;
  - (7) Has knowingly misrepresented or falsified information on the license application;
  - (8) Cannot meet the definition of therapeutic massage enterprise in section \_\_\_\_\_ of this Code;
  - (9) Owes taxes or assessments to the state, county, school district, or city that are due and delinquent; or
  - (10) Is the spouse of a person whose massage-related license has been suspended or revoked in the past five years.
- (b) **Massage therapist license.** No massage therapist license shall be issued to a person who:

- (1) Is not 18 years of age or older at the time the application is submitted to the issuing authority;
- (2) Has been convicted of any crime directly related to the occupation licensed as prescribed by Minn. Stat. § 364.03, subd. 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by Minn. Stat. § 364.03, subd. 3;
- (3) Whether the applicant has had an interest in, individually or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is submitted to the issuing authority;
- (4) Is not a citizen of the United States or a resident alien, or is legally prohibited from working in the United States;
- (5) Is not of good moral character or repute;
- (6) Has knowingly misrepresented or falsified information on the license application;
- (7) Is not affiliated with, employed by, or does not own a therapeutic massage enterprise licensed by the city; or
- (8) Cannot meet the definition of massage therapist in section \_\_\_\_\_ of this Code.

#### **LOCATIONS INELIGIBLE FOR THERAPEUTIC MASSAGE ENTERPRISE LICENSE**

- (a) ***Delinquent taxes.*** No therapeutic massage enterprise shall be licensed if such enterprise is located on property on which taxes, assessments, or other financial claims to the state, county, school district, or city are due and delinquent. In the event a suit has been commenced under Minn. Stat. §§ 278.01—278.13, questioning the amount or validity of taxes, the City Council may, on application, waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof, which remain unpaid for a period exceeding one year after becoming due.
- (b) ***Improper zoning.*** No therapeutic massage enterprise shall be licensed if the location of such enterprise is not in conformance with the city's zoning code.

#### **LICENSE RESTRICTIONS**

- (a) ***Posting and production of license.*** A therapeutic massage enterprise license issued must be posted in a conspicuous place on the premises for which it is used. Upon the demand of the City Administrator or a licensed peace officer, a therapeutic massage enterprise must also immediately produce a current and complete list of all licensed massage therapists who are employed by the therapeutic massage enterprise. A person licensed as a massage therapist shall also post his or her massage therapist license, with color photo, in a conspicuous

place on the premises at which the therapist is associated. A massage therapist shall produce his or her massage therapist license upon demand by the City Administrator or a licensed peace officer.

- (b) ***Licensed premises.*** A therapeutic massage enterprise license is only effective for the compact and contiguous space specified in the approved license application. If the licensed premises is enlarged, altered, or extended, the licensee shall inform the City Clerk within ten business days. It shall be the continuing duty of each licensee to properly notify the City Clerk, within ten business days, of any change in the information or facts required to be furnished on the application for license and failure to comply with this section shall constitute cause for revocation or suspension of such license.
- (c) ***Transfer of license prohibited.*** The license issued is for the person or the premises named on the approved license application. No transfer of a license shall be permitted from place to place or from person to person without complying with the requirements of an original application.
- (d) ***Affiliation with enterprise required.*** A massage therapist shall be employed by, affiliated with, or own a massage enterprise business licensed by the city, unless a person or place is specifically exempted from obtaining a therapeutic massage enterprise license in section \_\_\_\_\_ of this Code.
- (e) ***Employment of unlicensed massage therapists prohibited.*** No therapeutic massage enterprise shall employ or use any person to perform massage who is not licensed as a therapeutic massage therapist under this section, unless the person is specifically exempted from obtaining a therapist license in section \_\_\_\_\_ of this Code.
- (f) ***Coverage of genitals during massage.*** The licensee shall require that the person who is receiving the massage shall at all times have his or her genitals covered with non-transparent material or clothing.
- (g) ***Therapist dress/uniform requirements.*** Any massage therapist performing massage shall at all times be dressed professionally, shall have his or her breasts, buttocks, anus, and genitals covered with non-transparent material or clothing.
- (h) ***Effect of license suspension or revocation.*** No licensee shall solicit business or offer to perform massage services while under license suspension or revocation by the city.
- (i) ***Massage of certain body parts prohibited.*** At no time shall the massage therapist intentionally massage or offer to massage the penis, scrotum, anus, mons veneris, vulva, or vaginal area of a person.
- (j) ***Restrictions regarding hours of operation.*** No therapeutic massage enterprise shall be open for business, nor will any therapeutic massage therapist offer massage services, before 8:00 a.m. or after 10:00 p.m. any day of the week. No customers or patrons shall be allowed to remain upon the licensed premises after

10:30 p.m. and before 8:00 a.m. daily. Support activities such as cleaning, maintenance and bookkeeping are allowed outside of business hours.

- (k) ***Restrictions regarding use of the business premises outside of business hours.*** No licensee shall permit any person to occupy the business premises outside of business hours, unless it is to complete the support activities outlined in (j). No licensee shall permit any person to reside at the business premises.
- (l) ***Proof of local residency required.*** In the case of a therapeutic massage enterprise, the licensee, operator, managing partner, or manager of the licensed premise must show proof of residency in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin. In the case of therapeutic massage therapists, the licensee must show proof of residing in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin.
- (m) ***Inspections.*** In light of the high risk of involvement with illegal conduct an establishment providing massage therapy poses to the general public and in the interests of public safety, the issuing authority, environmental health department or designee, and/or the West Hennepin Public Safety Department shall have the right to enter, inspect, and search the licensed premises during the hours in which the licensed premises is open for business to ensure compliance with all provisions of this section and any other applicable sections of the city code and state building code. Any searches of the licensed premises are subject to reasonableness standards as recognized by the courts; search warrants will be secured when applicable. Any entry into a private residence will require either consent, exigent circumstances, or a search warrant. With reasonable notice, the business records of the licensee, including income tax returns, shall be available for inspection during the hours in which the licensed premises is open for business. The licensee is subject to a \$250.00 fee for a third inspection, if orders to correct are issued to the licensee and those orders are not corrected upon re-inspection. Licenses shall be granted only to establishments which can meet the safety and sanitary requirements of the city and of the building code regulations of the city and state.
- (n) ***Posting of rates.*** All massage enterprise businesses must post their rates for service in a prominent place in the entrance or lobby of the business.
- (o) ***Illegal activities.*** In addition to the license restrictions set forth in this section, any advertising by a licensee of any potential unlawful or erotic conduct at the licensed establishment shall be prohibited. A licensee under this chapter shall be strictly responsible for the conduct of the business being operated in compliance with all applicable laws and ordinances, including the actions of any employee or agent of the licensee on the licensed premises.

- (p) **Restrictions involving minors.** No person under the age of 18 shall be permitted at any time to be in or on the licensed premises as a customer, guest, or employee, unless accompanied by his/her parent or guardian.

#### **RESTRICTIONS REGARDING SANITATION, HEALTH, AND SAFETY**

- (a) **Toilet room requirements.** A licensed therapeutic massage enterprise shall be equipped with adequate and conveniently located toilet rooms for the accommodation of its employees and patrons. The toilet room shall be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room shall be kept clean and in good repair and shall be adequately lighted.
- (b) **Paper/linen requirements.** A licensed therapeutic massage enterprise shall provide single-service disposal paper or clean linens to cover the table, chair, furniture, or area on which the patron receives the massage; or in the alternative, if the table, chair, or furniture on which the patron receives the massage is made of material impervious to moisture, such table, chair, or furniture shall be properly sanitized after each massage.
- (c) **Washing of hands required.** The massage therapist shall wash his or her hands and arms with water and soap, anti-bacterial scrubs, alcohol, or other disinfectants prior to and following each massage service performed.
- (d) **Door latches and locks.** Doors on massage therapy rooms shall not be locked or capable of being locked. Locks, latches or other devices intended to secure a door so as to prevent it from being opened by any person from either side of the door with or without a key cannot be present on any doors of rooms intended for massage therapy.

#### **TERM, RENEWAL OF LICENSE**

- (a) The term of a massage therapist license and a therapeutic massage enterprise license is one year. If an individual or enterprise submits an application any time during a calendar year, the term shall expire December 31 of the year of issuance. The license fee for a partial calendar year may be pro-rated to one-half of the annual fee if an application is filed with the issuing authority after June 30.
- (b) Licenses must be renewed annually. A massage therapist license issued under this section shall expire on December 31 of the year of issuance of the license. A therapeutic massage enterprise license issued under this section shall expire on December 31 of the year of issuance. An application for the renewal of an existing license shall be made at least 75 days prior to the expiration date of the license and shall be made in such form as the issuing authority requires.
- (c) An application for a renewal of an enterprise or individual license shall be made in the same manner as the original application. The license and investigation fees for a renewal shall be the same as those contained in section \_\_\_\_\_. If the license holder is a corporation, licenses must also be renewed within 30 days whenever

more than ten percent of the corporation's stock is transferred. If the license holder is a partnership, the license must also be renewed within 30 days whenever a new partner is added to the partnership. If the license holder is an LLC, the license must be renewed within 30 days whenever a change in membership or chief manager occurs.

- (d) After the completion of the renewal license verification process, the issuing authority shall present the license application to the City Council in accordance with this section. If the application is denied, the City shall notify the applicant of the determination in writing and by regular mail to the address provided on the application form. The notice shall inform the applicant of the right, within 20 days after receipt of the notice by the applicant, to request an appeal of the denial to the City Council. If an appeal to the City Council is timely received by the City, the hearing before the City Council shall take place within a reasonable period of receipt of the appeal by the issuing authority.

#### **SANCTIONS FOR LICENSE VIOLATIONS**

- (a) ***Suspension or revocation.*** The City Council may impose an administrative penalty, suspend or revoke a license issued pursuant to this section, at its discretion, for:
- (1) A violation related to fraud, misrepresentation, or false statement contained in a license application or a renewal application.
  - (2) A violation related to fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business.
  - (3) Any violation of this section or state law.
  - (4) A violation by any licensee or individual that is directly related to the occupation or business licensed as defined by Minn. Stat. § 364.03, subd. 2.
  - (5) Conducting the licensed business or occupation in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the community.
  - (6) If the owner, operator, manager, lessee or any of the employees are found to be in control or possession of an alcoholic beverage, a narcotic drug or controlled substance on the premises, other than drugs which may be purchased over the counter without a prescription or those for which the individual has a prescription.
  - (7) If the holder of an enterprise license fails to maintain with the issuing authority a current list of all employees of such licensed premises. The list shall include all massage therapists licensed under this section.
  - (8) A material variance in the actual plan and design of the premises from the plans submitted.



- (9) Neither the charging of a criminal violation nor a criminal conviction is required in order for the council to impose an administrative penalty or suspend or revoke a license.
- (b) **Notice and hearing.** A revocation or suspension by the City Council shall be preceded by written notice to the licensee and a hearing. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice shall be mailed by regular mail to the licensee at the most recent address listed on the license application.

\_\_\_\_ THROUGH \_\_\_\_ RESERVED

### **VIOLATIONS AND PENALTIES**

Any person or entity violating the provisions of this section is guilty of a misdemeanor under Minnesota law, and shall be punished by a fine or by imprisonment, or both, together with the costs of prosecution. Each violation of this section shall constitute a separate offense. Conviction of a violation of this section, while not required, may be grounds for the suspension or revocation of any license issued under this section.

### **SEVERABILITY**

If any section, subsection, sentence, clause, or phrase of this section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this section. The City Council hereby declares that it would have adopted the section in each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

\_\_\_\_ THROUGH \_\_\_\_ RESERVED

# DRAFT

## CITY OF INDEPENDENCE ORDINANCE NO. \_\_\_\_\_

### ORDINANCE AMENDING CHAPTER 9 OF THE CITY CODE TO REGULATE THE RESIDENCE LOCATION OF PREDATORY OFFENDERS

THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MINNESOTA, HEREBY ORDAINS:

SECTION 1. Chapter 9 of the Independence City Code shall be amended by adding the following as section 920:

#### **920.00 Predatory Offenders Residency – Prohibited Conduct**

**Subd. 1. Finding and intent.** Repeat predatory offenders present an extreme threat to the public safety. Predatory offenders are likely to use physical violence and to repeat their offenses, and most predatory offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of predatory offender victimization to society at large, while incalculable, unmistakably steep.

It is the intent of this Section to serve the city’s compelling interest to promote, protect, and improve the health, safety, and general welfare of Independence citizens by creating areas around locations where children are known to regularly congregate in concentrated numbers wherein certain predatory offenders are prohibited from establishing temporary or permanent residence.

**Subd. 2. Definitions.** The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this subdivision, except where the context clearly indicates a different meaning:

**A.** “Designated predatory offender” means any person who has been categorized as a Level III predatory offender under Minnesota Statutes Section 244.052, a successor statute, or a similar statute from another state in which that person’s risk assessment indicates a high risk of re-offense;

**B.** “Permanent residence” means a place where a person abides, lodges, or resides for 14 or more consecutive days;

**C.** “Temporary residence” means a place where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person’s permanent address, or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the person’s permanent residence;

D. "School" means a public or nonpublic elementary or second school;

E. "Licensed child care center" means a group child care center currently licensed by the applicable County or State of Minnesota;

F. "Public playground" means a city-owned, improved park or other outdoor area designed, equipped, and set aside primarily for children's play.

### **Subd. 3. Prohibited Location of Residence**

A. It is unlawful for any designated predatory offender to establish a permanent or temporary residence within 2,000 feet of any school, licensed child-care facility, public playground, or any other place where children are commonly known to regularly congregate.

**B. Measurement of distance.** For purposes of determining the minimum distance separation required by this Section, the requirement shall be measured by following a straight line from the outer property line of the permanent or temporary residence of the designated predatory offender to the nearest outer property line of the protected facility in subdivision 2.

**C. Penalties.** Any person who violates this Section shall be guilty of a misdemeanor and shall be punished by a fine of an amount not exceeding \$1,000.00 and/or imprisoned for a period not to exceed 90 days. Each day that a person maintains a permanent or temporary residence in violation of this Code shall constitute a separate offense.

### **Subd. 4 Exceptions**

A. A designated predatory offender residing within a prohibited area as described in subdivision 3 does not commit a violation of this Section if any of the following apply:

1. The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statutes Sections 243.166 and 243.167 or a successor statute, prior to June 1, 2015;

2. The person was a minor when they committed the offense and they were convicted as an adult;

3. The person is a minor;

4. The school, licensed child care center, or public playground within 2,000 feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statutes Sections 243.166 and 243.167, or a successor statute;

5. The residence is also the primary residence of the person's parents, grandparents, siblings, or spouse; or

6. The residence is a property purchased, leased, or contracted with and licensed by the Minnesota department of corrections prior to June 1, 2015.

SECTION 2. This ordinance shall take effect and be in force immediately after its passage and publication in accordance with applicable law.

Dated the \_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Marvin Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Mark Kaltsas, City Administrator

City of Independence  
Community Survey Discussion

---

*To:* City Council  
*From:* Mark Kaltsas, City Administrator  
*Meeting Date:* April 25, 2017

***Request:***

Discuss and provide direction to staff concerning the draft community survey.

***Discussion:***

Based on the information developed and provided during the initial kick-off meeting for the 2040 Comprehensive Plan, staff has prepared a draft community survey. The community survey was developed in an effort to solicit feedback and comments from constituents relating to land use, planning, parks, economic development and transportation. Questions were formulated to seek feedback that will be used to help direct the development of the 2040 comprehensive plan.

The survey incorporates a variety of question formats as discussed during the joint meeting. The number of questions was strategically limited to a reasonable number. It was intended that this survey would have limited redundancy and/or open ended questions. The questions seek to provide the City with tangible feedback relating to key planning and growth issues. Several topics are presented in multiple-questions, but with different context (i.e. do you think the City should pursue a type of development; and then, do you think the City should utilize public funding to support the development).

The draft survey was prepared in a single-page mail-able format but is also anticipated to be available on the City's website as an online survey. Staff would anticipate that the City will mail a copy of the survey to every resident and have a pre-paid return reply. In addition, the City will have the survey available on the website.

***Recommendation:***

The City Council is being asked to provide feedback pertaining to the draft survey.

**Attachments: Draft – Community Survey**