ORDINANCE NO. 4156

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Title 9 of the Kent City Code entitled "Public Safety," by adding a new Chapter 9.04, entitled "Massage and Reflexology Services," and amending Chapter 5.01, entitled "General Business Licenses," by adding a new section 5.01.135, entitled "Massage or reflexology businesses - Conviction for prostitution or fraud related activity - Conviction for violation of Chapter 9.04 KCC - Denial or revocation of business license."

RECITALS

A. Licensed massage practitioners and reflexologists play an important role in the health and wellbeing of our community.

B. While massage therapists and reflexologists must obtain a state license to practice, Washington State engages in little regulation of massage parlors themselves.

C. In Kent, as in most other Washington jurisdictions, massage parlors have opened to provide massage and reflexology by non-licensed practitioners. There is no way to ensure that the practitioners providing
these services comply with the health and safety requirements of state law.

D. Moreover, these businesses are, on occasion, engaged in criminal activity such as prostitution. The Kent Police Department has investigated some of the unlicensed businesses, and has established probable cause to file criminal charges. However, these investigations are very time consuming and resource intensive. In addition, there have been circumstances in which businesses employing non-licensed massage and reflexology practitioners have been charged with a criminal offense, and later reopen to provide the same services under a different name.

E. These illegitimate service providers threaten the reputation of licensed massage practitioners, and threaten the public health, safety and welfare.

F. Requiring all massage and reflexology providers to be licensed under state law, and requiring all practitioners and business owners to be responsible for proper state licensing will reduce the incidence of criminal activity, will protect the reputation of properly licensed providers, and will protect the public health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Amendment. Title 9 of the Kent City code, entitled “Public Safety,” is amended by adding a new chapter 9.04 entitled “Massage and Reflexology Services,” as follows:

Amend KCC 9—Public Safety Massage and Reflexology Services
Amend KCC 5.01 – Business Licensing
Sec. 9.04.010. Purpose. The Kent City Council recognizes the health and wellness benefits of massage and reflexology, and that massage and reflexology businesses in the city of Kent serve a legitimate and beneficial purpose in the community. The Council also recognizes that there are some businesses that hold themselves out as massage or reflexology businesses, but employ unlicensed persons to provide massage and uncertified persons to provide reflexology who fail to follow state health and licensing requirements, and do not have the proper training required to obtain a state license or certification. In addition, these businesses that employ unlicensed or uncertified persons to provide massage and reflexology can be used to facilitate the commission of various criminal acts, including but not limited to prostitution. These businesses that permit unlicensed or uncertified persons to perform massage and reflexology or permit the commission of unlawful acts threaten the business and reputation of legitimate and licensed businesses and practitioners, and present a threat to the public health, safety, and welfare. This chapter is intended to inhibit the ability of an individual or businesses to engage in the practice of providing unlicensed massage and reflexology, and support the legitimate provision of these services by licensed massage practitioners and reflexologists.

Sec. 9.04.020. Definitions. For purposes of this chapter, the terms and phrases below shall have the meanings that follow:

A. "Advertise" includes, but is not limited to, signs located at a massage business or reflexology business; signs located in places other than at a massage business or reflexology business; advertisements on vehicles; advertisements in paper media such as newspapers, magazines,
fliers, cards or business cards; or advertisements in electronic media such as internet websites, social media, electronic classified advertisements, cell phone applications, and television or radio advertisements.


C. "Gross misdemeanor" and "misdemeanor" shall have the same meaning as set forth in Kent City Code 9.02.410 as now enacted or hereafter amended or recodified.

D. "License," "certificate" and "certification" mean a license, certificate or certification issued pursuant to chapter 18.108 RCW.

E. "Conspicuously display" shall mean the display of licenses and certificates in a manner that can be viewed and read by a person immediately upon entry into the initial common area of a massage business or reflexology business without having to request to see the license or certification.

F. "Reflexologist" means a person who practices reflexology.

G. "Represent himself or herself as a massage practitioner" shall have the same meaning as set forth in RCW 18.108.030(1)(b).

H. "Represent himself or herself as a reflexologist" shall have the same meaning as set forth in RCW 18.108.030(2)(b).

References in this chapter to chapter 18.108 RCW or a specific section of chapter 18.108 RCW shall include the chapter and sections as currently enacted and as amended or recodified in the future.

Sec. 9.04.040. Owner, director, manager – Proof.

A. For purposes of this chapter, whether a person is an owner, director, manager, or other person in charge of a massage business or reflexology business may be established from evidence such as, but not limited to:

1. The person holds himself or herself out as an owner, director, manager, or some other like title evidencing control over business decisions;
2. The person is responsible for the general business decisions of the business;
3. The person is considered by those who provide massage or reflexology services as an owner, director, manager, or other person in charge;
4. The person is in control or partial control of when, how, or how much those who provide massage or reflexology services work or are paid, or whether those who provide massage or reflexology services are employees or contractors retained to provide services on behalf of the business;
5. The person is listed as a registered agent of the business;
6. The person is listed as a “governing people” by the Washington State Business Licensing Service;
7. The person is an applicant or is listed as an owner on a city or state business license or license application;

8. The person receives income from the business that is dependent on revenue generated by another person providing massage or reflexology services on behalf of or at the business;

9. The person has signed a lease or rental agreement for property at which the business is operated or is responsible for lease or rent payments;

10. The person has signed for a loan on behalf of the massage or reflexology business;

11. The person is financially responsible for the massage business or reflexology business utilities or services such as water, electricity, garbage, sewer, telephone, internet, cable television, security, cleaning, maintenance or accounting;

12. The person pays taxes on behalf of the business; or

13. The person is responsible for ensuring the business is properly supplied with resources necessary to carry out the work of the business or maintain the business.

B. The presence of any of the circumstances described in subsection A shall be sufficient to establish that a person is the owner, director, manager, or other person in charge of a massage business or reflexology business. The circumstances described in subsection A are not exclusive and other evidence may demonstrate a person is an owner, director, manager, or other person in charge of a massage business or reflexology business.

Sec. 9.04.050. Exemptions – Limitations – Name or structure of business.
A. The this chapter shall not apply to the following:

1. Activities set forth in RCW 18.108.050 when performed as provided in that statute; or

2. Massage or reflexology that is not provided in exchange for a fee, property or other consideration.

B. The exemptions set forth in subsection A shall not apply to any person who practices or represents himself or herself as a massage practitioner or who practices reflexology or represents himself or herself as a reflexologist and who advertises for the massage or reflexology services, to any business that advertises for massage or reflexology services, or to any person who provides massage or reflexology services at a business that advertises for such services.

C. The exemptions set forth in subsection A shall not apply to any person who obtains massage or reflexology services from a person who advertises for the massage or reflexology services, from a business that advertises for massage or reflexology services, or from any person who provides massage or reflexology services at a business that advertises for such services.

D. The fact that a person or business that provides massage or reflexology services describes or advertises such services by a name other than massage or reflexology shall not exempt that person or business from this chapter.

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E. In the event the services provided fall within the definition of massage or reflexology, the manner in which a business is incorporated or structured shall be of no consequence in determining if a business provides massage or reflexology services.

F. A club or cooperative arrangement in which a person pays a fee to become a member of the club or cooperative, and as a result of such membership, he or she obtains massage or reflexology services, shall be considered a massage business or reflexology business.

Sec. 9.04.060. Inspections.
A. Law enforcement personnel shall have the authority to inspect the premises of any massage business or reflexology business in order to ensure:
   1. Compliance with the requirement that licenses and certifications are conspicuously displayed and valid;
   2. That those providing massage or reflexology services are validly licensed and of proper age; and
   3. Compliance with the advertising requirements of KCC 9.04.120.

B. Inspections shall be limited to times when the massage or reflexology business is open.

C. Inspections shall be limited to the common areas of the massage or reflexology business. This section shall not authorize entry or inspection of rooms in which massage or reflexology is provided and which are separated from the common area of the massage business or reflexology business absent consent, a warrant, or other lawful basis.
D. This section shall not be interpreted as limiting the use by law enforcement of any lawful investigatory techniques.

Sec. 9.04.070. Massage practitioner or reflexologist – License or certificate required – Violation.

A. It shall be unlawful for any person to practice massage, or represent himself or herself as a massage practitioner in the city of Kent without a valid and current massage practitioner’s license.

B. It shall be unlawful for any person to practice reflexology or represent himself or herself as a reflexologist in the city of Kent without a valid and current massage practitioner’s license or certificate in reflexology.

C. An unissued license or certificate, or an expired, revoked, or suspended license or certificate, shall not be considered a valid license or certificate.

Sec. 9.04.080. Massage practitioner or reflexologist – Owner, director, manager, or other person in charge to ensure valid license or certificate – Violation.

A. It shall be the responsibility of any owner, director, manager, or other person in charge of a massage business or reflexology business in the city of Kent to ensure that each person who practices massage, or represents himself or herself as a massage practitioner, is validly and currently licensed, and to ensure that each person who practices
reflexology or represents himself or herself as a reflexologist is validly and currently licensed as a massage practitioner or certified as a reflexologist.

B. It shall be unlawful for any owner, director, manager, or other person in charge of a massage business or reflexology business to facilitate or, with knowledge or criminal negligence, permit a person who does not have a valid and current massage practitioner’s license to practice massage or represent himself or herself as a massage practitioner.

C. It shall be unlawful for any owner, director, manager, or other person in charge of a massage business or reflexology business to facilitate or, with knowledge or criminal negligence, permit a person who does not have a valid and current massage practitioners license or who is not a certified reflexologist to practice reflexology or represent himself or herself as a reflexologist.

D. A person with an unissued license or certificate, or whose license or certificate is expired, revoked, or suspended, shall not be considered validly licensed or certified.

E. For the purposes of this section, the failure of the owner, director, manager, or other person in charge of a massage business or reflexology business to confirm the validity of a massage license or reflexology certificate through the Washington Department of Health shall constitute criminal negligence.

Sec. 9.04.090. Display of massage practitioner or reflexologist license or certificate required – Violation.
A. At any massage business or reflexology business, a copy of the valid and current license of each person who practices massage or represents himself or herself as a massage practitioner at or on behalf of the massage business or reflexology business, and the valid and current massage practitioner’s license or reflexology certificate of each person who practices reflexology or represents himself or herself as a reflexologist at or on behalf of the massage business or reflexology business, shall be conspicuously displayed and shall be made available to persons receiving massage or reflexology services or to law enforcement for inspection upon request.

B. It shall be unlawful for any owner, director, manager, or other person in charge of a massage business or reflexology business to fail to conspicuously display the valid and current massage practitioner’s license of each person who practices massage or represents himself or herself as a massage practitioner at or on behalf of the massage business or reflexology business.

C. It shall be unlawful for any owner, director, manager, or other person in charge of a massage business or reflexology business to fail to conspicuously display the valid and current massage practitioner’s license or certificate to practice reflexology of each person who practices reflexology or represents himself or herself as a reflexologist at or on behalf of the massage business or reflexology business.

D. Each person who practices massage or represents himself or herself as a massage practitioner, and each person who practices reflexology or represents himself or herself as a reflexologist shall have his or her valid

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and current license or certificate at each location in which he or she practices massage or represents himself or herself as a massage practitioner, and at each location in which he or she practices reflexology or represents himself or herself as a reflexologist, and the valid and current license or certificate shall be provided to the person receiving the massage or reflexology service or to law enforcement for inspection upon request.

E. It shall be unlawful for any person who practices massage or represents himself or herself as a massage practitioner, to fail to have his or her valid and current massage practitioner’s license at each location in which massage services are provided, or display his or her valid and current license to the person receiving the massage service or to law enforcement for inspection when requested.

F. It shall be unlawful for each person who practices reflexology or represents himself or herself as a reflexologist, to fail to have his or her valid and current massage practitioner’s license or reflexology certificate at each location in which reflexology services are provided, or display his or her valid and current license or certificate to the person receiving the reflexology service or to law enforcement for inspection when requested.

G. It shall be unlawful for any person to present or conspicuously display an expired, altered, fake or fraudulently obtained license, certificate or certification. It shall be unlawful for an owner, director, manager or other person in charge of a massage business or reflexology business to facilitate or permit another to present or conspicuously display an expired, altered, fake or fraudulently obtained license, certificate or certification.
Sec. 9.04.100. Receipt of massage or reflexology services from unlicensed massage practitioner or reflexologist - Unlawful.

A. It shall be unlawful for any person to receive massage services from another whom the recipient knows, or reasonably should know, is not validly or currently licensed to provide massage services. It shall be unlawful for any person to receive reflexology services from another whom the recipient knows, or reasonably should know, is not validly or currently licensed as a massage practitioner or certified to provide reflexology services.

B. It shall be an affirmative defense to a violation of this section that the person receiving the massage or reflexology services inquired of the license or certification status of the person providing the services and was provided a document purporting to be a valid and current license of the massage practitioner or valid and current certificate of the reflexologist.

Sec. 9.04.110. Minors practicing massage or reflexology - Responsibility of owner, director, manager or other person in charge - Receipt of massage or reflexology services from minor unlawful.

A. It shall be the responsibility of the owner, director, manager, or other person in charge of a massage business or reflexology business to verify that each person who provides massage or reflexology services has attained the age of 18. It shall be unlawful for any owner, director, manager, or other person in charge of a massage business or reflexology
business to permit or facilitate the provision of massage or reflexology services by a person who has not reached the age of 18.

B. It shall be unlawful for any person to receive massage or reflexology services from another whom the recipient knows, or reasonably should know, has not reached the age of 18. It shall be an affirmative defense to a violation of this section that the person receiving the massage or reflexology services inquired of the age of the person providing the services and was provided a document purporting to be a valid and current license of the massage practitioner or valid and current certificate of the reflexologist.

Sec. 9.04.120. Advertising. It shall be unlawful to advertise the practice of massage or practice of reflexology except in accordance with RCW 18.108.040.

Sec. 9.04.130. Violations - Penalty.

A. The first violation of any provision of this chapter shall constitute a misdemeanor.

B. Each subsequent violation of this chapter, whether alleged in the same prosecution as the first violation or in subsequent prosecutions, shall constitute a gross misdemeanor.

SECTION 2. - Amendment. Chapter 5.01 of the Kent City Code, entitled “General Business License,” is hereby amended by adding a new section 5.01.135 entitled, “Massage or reflexology businesses – Conviction
for prostitution or fraud related activity – Conviction for violation of Chapter 9.04 KCC – Denial or revocation of business license."

Sec. 5.01.135. Massage or reflexology businesses - Conviction for prostitution or fraud related activity – Conviction for violation of Chapter 9.04 KCC - Denial or revocation of business license.

A. No person convicted of an offense under Chapter 9A.88 RCW or a similar law of another state, and no person convicted of an offense under Chapter 9A.60 RCW or a similar law of another state when such violation of Chapter 9A.60 RCW or similar law of another state is related to the operation of a massage business or reflexology business, shall be authorized or entitled to obtain a city of Kent business license for a massage business or reflexology business.

B. The issuance of a business license for a massage business or reflexology business to a person previously convicted of an offense described in subsection A shall be null and void.

C. In the event a person who has obtained a city of Kent business license for a massage business or reflexology business is thereafter convicted of an offense described in subsection A, such business license may be revoked in accordance with KCC 5.01.150. Revocation may occur regardless of the jurisdiction or location in which the violation of the offense occurs. The bases for revocation of the business license pursuant to this section shall be in addition to the grounds for revocation provided in KCC 5.01.130.
D. For a two year period following conviction, a business license application for the operation of a massage business or reflexology business may be denied in accordance with this chapter to any licensee convicted of an offense under Chapter 9.04 KCC. The bases for denial of the business license pursuant to this section shall be in addition to the grounds for revocation provided in KCC 5.01.130.

E. A business license for the operation of a massage business or reflexology business may be revoked in accordance with this chapter to any licensee convicted of an offense under Chapter 9.04 KCC. The bases for revocation of the business license pursuant to this section shall be in addition to the grounds for revocation provided in KCC 5.01.130.

F. For the purposes of this section, the terms “massage,” “massage business,” “reflexology,” and “reflexology business” shall have the meanings set forth in RCW 18.108.010 as now enacted or hereafter amended or recodified.

**SECTION 3.** - **Severability.** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 4.** - **Corrections by City Clerk or Code Reviser.** Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.
SECTION 5. - Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage and publication, as provided by law.

Suzette Cooke, Mayor

ATTEST:

Ronald F. Moore, MMC

RONALD F. MOORE, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 16th day of June, 2015.

APPROVED: 16th day of June, 2015.

PUBLISHED: 19th day of June, 2015.

I hereby certify that this is a true copy of Ordinance No. 4156 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

Ronald F. Moore, MMC (SEAL)

RONALD F. MOORE, CITY CLERK

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