



TOWN OF FARMVILLE

CODE OF ORDINANCES

CHAPTER 34 – MASSAGE PARLORS, HEALTH SALONS, ETC.

ARTICLE I

IN GENERAL

Section 1 DEFINITIONS

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. Business or Profession of Massage includes the massage or treatment of any person for a fee or in expectation of a gratuity from the person massaged.
2. Massage means the manipulation of body tissue generally for remedial or hygienic purposes as by rubbing, stroking, kneading or tapping, by hand or an instrument.
3. Massage Business means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios and massage studios.
4. Massagist means any person engaged in the business or profession of massage.

Section 2 PURPOSE, SCOPE, EXEMPTIONS

To protect public health, safety, welfare and morals, the privilege license provisions and regulations in this chapter are ordained for the privilege of carrying on the business, trade, or profession of massagist and for the operation or carrying on of the businesses, trades, or professions commonly known as massage parlors, health salons, physical culture studios, or similar establishments wherein massage or physical manipulation of the human body is carried on or practiced. The provisions of this chapter shall not apply to a regularly established and licensed hospital, sanitarium, nursing home, nor to an office or clinic operated and regularly used by a duly qualified and licensed medical practitioner, osteopath or chiropractor in connection with the practice of medicine, chiropractic or osteopathy.

Section 3 HOURS OF OPERATION

- (A) No person licensed as a massagist under article II, division 3 of this chapter shall massage or treat any person, or engage in the business or profession of massage, before 7:00 a.m. or after 10:00 p.m., prevailing time.

- (B) No person licensed under article II, division 2 of this chapter shall admit customers or prospective customers, or remain open for business, or allow, or permit or condone any massage or treatment of any person upon the premises before 7:00 a.m. or after 10:00 p.m., prevailing time.
- (C) No person in charge of managing a massage business upon the premises shall allow, permit, or condone any massage or treatment of any person before 7:00 a.m. or after 10:00 p.m., prevailing time.

Section 4 PATRONAGE OF MASSAGE BUSINESSES BY MINOR AND EMPLOYMENT OF MINORS

- (A) No person licensed as a masseur or masseuse under article II, division 3 of this chapter shall massage or treat any person under the age of eighteen (18) upon the licensed premises, except, upon written order by a licensed physician, osteopath, chiropractor, or registered physical therapist, such order being dated and in the possession of the masseur or masseuse giving the massage or treatment. A violation of this subsection shall be grounds for revocation of any license issued to such violator pursuant to this article.
- (B) No person licensed under this section hereof shall allow, permit or condone the massage or treatment of any person under the age of eighteen (18) upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, or registered physical therapist, such order being dated, and a true copy of such order being in the possession of the licensee before administration of any massage or treatment. A violation of this subsection shall be grounds for revocation of any license issued to such violator pursuant to this article.
- (C) No person licensed pursuant to article III, division 2 of this chapter shall employ any person under the age of eighteen (18) years in the operation of a massage business.

Section 5 PROHIBITED ACTS

- (A) It shall be unlawful for any massage business as herein defined, to knowingly provide, allow or permit a massage or treatment to be given by a person to a person of the opposite sex.
- (B) It shall be unlawful to any massagist to massage or treat a person of the opposite sex.
- (C) It shall be unlawful for any person to massage or offer to massage the private parts of another for hire.
- (D) In this section:

(1) Massage means the manipulation of body tissue generally for remedial or hygienic purposes as by rubbing, stroking, kneading, by hand or instrument.

(2) Private parts means the penis, scrotum, mons veneris, vulva or vaginal area.

(E) The provisions of this section shall not apply to licensed medical practitioners, osteopaths or chiropractors or persons operating at their direction, in connection with the practice of medicine, chiropractic or osteopathy.

Section 6 MEDICAL EXAMINATION OF MASSAGISTS

The Town Board shall have authority to direct that any person licensed under article II, division 3 submit to a medical examination by a licensed physician approved by the Town Board. This authority shall be exercised only when the Town Board has reason to believe that any such person has contracted a communicable disease. Refusal to submit to such examination shall be grounds for revocation of the license. Notwithstanding the provisions of this section, every person licensed under this section shall file and continue to file with the town tax collector a new medical certificate with each application for renewal of the license prescribed by this section. Failure to file such updated certificates shall be grounds for revocation of the license.

ARTICLE 2

LICENSES

(State law reference - Privilege licenses, G.S. ¶160A-211)

DIVISION I - GENERALLY

Section 1 EMPLOYER TO USE ONLY LICENSED EMPLOYEES

No person licensed under division 2 of this article shall allow or permit any person to massage or treat any person upon the premises operated by the licensee unless the person giving such massage or treatment has complied with all requirements of licensing under division 3 of this article and section 6. Violation of this section shall be grounds for revocation of the license issued to such violator pursuant to this article.

Section 2 TERM; DUE DATE, ETC.

The licenses required by this article are annual privilege licenses. Such licenses shall be due and payable in the same manner as prescribed for other privilege licenses issued by the town tax collector pursuant to the license and privilege tax ordinance of the town.

The Town Clerk shall be the custodian of the Town Seal.

Section 3 POSTING

(A) Every massagist shall post the license required by this article in his work area.

- (B) Every person licensed under division 2 of this article shall display such license in a prominent place.

Section 4 NOTICE AND HEARING ON REVOCATION

Before the town board revokes a license issued pursuant to this article, town board shall cause a written notice to be sent by certified mail to the licensee affected or applicant affected, at the address stated in the license or application. The notice shall advise the affected party of a right to appear before the town board, with or without legal counsel, at a stated time and place, for the purpose of presenting any evidence relevant to such revocation and for the purpose of hearing all evidence submitted and examining or cross-examining any person providing such evidence.

Section 5 CONSEQUENCES OF REVOCATION

- (A) If any person shall have had a massage business operator license issued to him or to a partnership, corporation, or association in which he held a legal or beneficial interest at the time said license was issued or if any person shall have had issued to him a massagist license and either of such licenses is subsequently revoked pursuant to any provision of this chapter, he shall be ineligible to apply for either a massage business operator license or a massagist license or a renewal of either for a period of three (3) years from the date of such revocation.
- (B) If any person holds both a massage business operator license and a massagist license, the revocation of either such license pursuant to any provision of this chapter shall be grounds for the simultaneous revocation of the other simultaneously held license. Such person shall be ineligible to apply for either a massage business operator license or a massagist license or a renewal of either for a period of three (3) years from the date of such revocation.

DIVISION 2 – BUSINESS LICENSE

Section 6 REQUIRED

No person shall operate a massage business unless such person shall have first received the privilege license for same.

Section 7 APPLICATION

Every application for the privilege license required by this division shall be upon a form approved by the town manager and shall be filed with the town tax collector. Every such application shall be made under oath and shall contain the following information:

- (1) If the applicant is a person, the name and residence address of such person. If the applicant is a partnership, corporation or association, the name and residence address of all persons having any legal or beneficial interest in such applicant.

- (2) The address of the premises where the massage business shall be located.
- (3) A complete statement of all convictions of any person whose name is required to be given in paragraph (1) above for any felony, or prostitution or any violation of any law relative to prostitution.
- (4) A complete statement of any revocation, by any governmental unit, of any license to operate a massage business or to engage in the business or profession of a massage held by any person whose name is required to be given in paragraph (1) above.
- (5) A complete statement of any conviction of any person whose name is required to be given in paragraph (1) above, for violation of any statute, law, ordinance or regulation of any government concerning the operation of a massage business or the business or profession of massage.
- (6) The name of address of any massage business or other establishment owned or operated by any person whose name is required to be given in paragraph (1) above wherein the business or profession of massage is carried on.
- (7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

Section 8 INVESTIGATION

The town tax collector shall transmit a copy of the application for the license required by this division to the police department for an investigative report; to the inspections division to determine compliance with all zoning and building regulations and ordinances, and to the fire department to determine compliance with any law relating to fire protection. The police and fire departments and the inspections division shall, within a reasonable time, not to exceed thirty (30) days, report the results of their examinations to the town tax collector.

Section 9 ISSUANCE STANDARDS

An application for the license required by this division in proper form, accompanied by all reports required by this division, shall be approved by the town tax collector if:

- (1) The application contains no misstatement of fact.
- (2) The applicant, or any person having any legal or beneficial ownership interest in the applicant, has not been convicted of any crime involving sexual misconduct, including but not limited to North Carolina General Statutes article 26 (G.S. ¶14-177 et seq.) or 27 (G.S. ¶ 14-203 et seq.) or of article I, section 5 of this Code, or of any federal statute relating to prostitution, or of any violation of any law or ordinance of any governmental unit concerning or related to the business or

profession of massage.

- (3) The applicant conforms to all requirements of applicable zoning, building, and fire prevention codes.
- (4) The applicant or any person having a legal or beneficial ownership interest in the applicant has not, for the three-year period preceding the application, had a previously issued license for engaging in the business or profession of massage revoked.

Section 10 ISSUANCE AND FEE

Upon approval of the application for the license required by this division and upon receipt of a fifty-dollar license fee, the town tax collector shall issue a privilege license to the applicant.

Section 11 DENIAL AND APPEAL THEREFROM

In the event the applicant for the license required by this division does not meet all of the conditions for issuance of the license, then the application shall be denied by the town tax collector. Thereafter, the applicant shall have ten (10) days in which to file an appeal and request a hearing before the town board. Upon appeal, the town board shall, within thirty (30) days, hold a hearing on the appeal and make a final determination thereof with respect to the application for a license.

Section 12 RESPONSIBILITY OF TRANSFEREE, ETC., FOR ACTS OF TRANSFEROR, ETC.

Any person who buys a massage parlor business from a former owner or other person having an ownership interest in such business does so subject to any pending criminal charges which are grounds for revocation and which involve the same business premises; upon any conviction resulting from said charges, the new owner or operator shall be ineligible for a business license at the same premises for a period of three (3) years, and any massage operator license for such premises held by any such person at the time of such conviction shall be subject to revocation to the same extent as the former license would have been.

Section 13 REVOCAION OR TERMINATION

- (A) A license issued pursuant to this division shall be revoked by action of the town board if the town board finds that:
 - (1) The licensee has violated any provision of this chapter; or
 - (2) The licensee, or any agent of the licensee, employs or permits to be on the premises of the applicant's massage business any person practicing the business or profession of massage who has not been issued the privilege required by division 3 of this article, or whose license under such division has been revoked; or

- (3) The licensee, or the legal or beneficial owner of any interest in the licensee is convicted of any crime involving sexual misconduct, including but not limited to North Carolina General Statutes article 26 (G.S. ¶14-177 et seq.) or 27 (G.S. ¶14-203 et seq.); or
 - (4) Any employee of the licensee is convicted of any felony in connection with his or her employment, or is convicted of any crime involving sexual misconduct, including, but not limited to North Carolina General Statutes article 26 (G.S. ¶ 14-177 et seq.) or 27 (G.S. ¶ 14-203 et seq.) or of article I, section 5 of this Code; or
 - (5) The licensee violates any zoning, building, or fire prevention ordinance.
- (B) A license issued pursuant to this division is void if the licensee moves or ceases operating a massage parlor at the location required to be stated in the application for the license. Any person whose business license would have been subject to revocation under any provision of this chapter for conduct which originated during the time such license was held and which is pending criminal trial at the time such license is surrendered or lapses may not receive a new license for operating a massage parlor for a period of three (3) years from the date of any pertinent conviction, and any massage operator license presently held by such person shall be subject to revocation on the basis of such conviction.

DIVISION 3 – MASSAGIST LICENSE

Section 14 REQUIRED

No person shall engage in the business or profession of massage unless such person shall have first received a privilege license for same.

Section 15 APPLICATION, PHYSICAL EXAM, ETC.

- (A) The application for the license required by this division shall be upon a form approved by the town manager and shall be filed with the town tax collector. Such application shall be given under oath and shall contain the following information:
- (1) The name, age and residence address of the applicant.
 - (2) A complete statement of the previous business or occupation of the applicant for the two (2) years immediately preceding the date of application, including any massage establishment experience.
 - (3) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance.

- (4) A complete statement of any revocation of any license granted by any governmental unit to the applicant to engage in the business or profession of massage.
 - (5) The date and place of applicant's birth, the name of applicant's parents, and the residence address or addresses of the applicant for the five (5) years immediately preceding the date of application.
- (B) The applicant shall submit as part of the application a medical certificate signed by a physician, licensed to practice in the state within seven (7) days of the date of the application. The certificate shall state the applicant was examined by the certifying physician and that the applicant is free of communicable disease. The additional information required by this subsection shall be provided at the applicant's expense. However, with respect to license renewal, a medical certificate previously filed hereunder shall be acceptable if it has been signed by said physician within ninety (90) days of the date of the application for renewal of the license.

Section 16 INVESTIGATION

The town tax collector shall transmit a copy of the application for the license required by this division to the police department for an investigative report. The police department shall, within a reasonable time, not to exceed thirty (30) days, report the results of its investigation to the town tax collector.

Section 17 ISSUANCE STANDARDS

An application for the license required by this division in proper form accompanied by all required reports shall be approved by the town tax collector if:

- (1) The applicant is at least eighteen (18) years of age.
- (2) The application contains no misstatements of fact.
- (3) The applicant has not been convicted of any crime involving sexual misconduct, including, but not limited to North Carolina General Statutes article 26 (G.S. ¶ 14-177 et seq.) or 27 (G.S. 14-203 et seq.) or of article I, section 5 of this Code, or of any federal statute relating to prostitution, or for violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage.
- (4) The applicant has not, for the three-year period preceding the application, had a previously issued license for engaging in the business or profession of massage revoked.

- (5) The applicant is free from communicable disease as evidenced by the required medical certificate.
- (6) The applicant has not been previously convicted of any violation of any provision of this chapter.

Section 18 ISSUANCE AND FEE

Upon the approval of the application for the license required by this division and upon receipt of a ten-dollar license fee, the town tax collector shall issue a privilege license to the applicant.

Section 19 DENIAL AND APPEAL THEREFROM

In the event the applicant does not meet all of the conditions for the license required by this division, then the application shall be denied by the tax collector. Thereafter, the applicant shall have ten (10) days in which to file an appeal and request a hearing before the town board. Upon appeal, the town board shall, within thirty (30) days, hold a hearing on the appeal and make a final determination thereof with respect to the application for a license.

Section 20 REVOCAION

A license issued pursuant to this division shall be revoked by action of the town board if the town board finds:

- (1) The licensee has violated any provision of this chapter.
- (2) The licensee is afflicted with a communicable disease.
- (3) The licensee has failed to be examined by a licensed physician when required by the town board pursuant to article I, section 6, or has failed to file any medial certificate required by such section.
- (4) The licensee has been convicted of a felony, or any crime involving sexual misconduct, including, but not limited to North Carolina General Statutes article 26 (G.S. ¶ 14-177 et seq.) or 27 (G.S. ¶ 14-203 et seq.), or of violating article I, section 5 of this Code, or under any federal statute relating to prostitution, or for violation of any law or ordinance of any governmental unit related to the business or profession of massage.

Adopted by the Board of Commissioners on April 21, 1993