

CHAPTER 13

MASSAGE SALONS, HEALTH CLUBS, ETC.

SECTION 13-1. DEFINITIONS.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Erogenous area: The pubic area, penis, scrotum, vulva, perineum or anus.

Health club: Any establishment which offers service in the form of massage, baths, exercises or similar services, in combination, to club members, or to the public for a charge. The terms "health club" and "massage establishment" do not include:

- (1) Hospitals, nursing homes, medical clinics, or other offices or quarters of a physician, a surgeon, a chiropractor or an osteopath or a physical therapist duly licensed by the Commonwealth of Virginia;
- (2) Exercise clubs exclusively for the purpose of maintaining physical fitness and health where the services are performed, without massage in any form for pay and without any physical touching with any part of one person's body with an erogenous area of any other person;
- (3) Barbershops and beauty parlors in which massages are administered only to the scalp, the face, the neck or the shoulder; or
- (4) Any establishment:
 - (a) offering or providing facilities for, or instruction in, controlled exercise, weight lifting, calisthenics, or general physical fitness;
 - (b) which is actually occupying the premises of not less than five thousand (5,000) square feet, of which not more than five percent (5%) is used for massages; and
 - (c) whose gross income from massages is less than fifteen percent (15%) of the total gross business income derived from physical fitness sales contracts at each business location.

Massage establishment: An establishment having a fixed place of business where massages are administered for pay including, but not limited to, massage parlors or salons, health clubs, sauna baths and steam baths.

WINCHESTER CODE

Massage technician, masseur and masseuse: A person who practices any one or more of the arts of body massage, either by hand or mechanical apparatus, oil rubs, corrective gymnastics, mechanotherapy, including color therapy, dietetics, hot packs, cabinet, tub, shower, sitz, vapor, steam or any other special type of bath. This definition shall not be construed to include a physician, surgeon, chiropractor, osteopath, physical therapist, or nurse duly licensed by the Commonwealth of Virginia, nor to include any person certified as a “certified massage therapist” by the State Board of Nursing, or any student while engaged in a course of study leading to such a certification given by a school licensed by the State Board of Education for such purposes. (Ord. No. 007-99, 3-30-99)

SECTION 13-2. COMPLIANCE WITH CHAPTER.

It shall be unlawful for any person to engage in the business of a massage salon or health club or as a massage technician without a permit, or to be in violation of any requirements or prohibitions set forth in this chapter or any regulation issued pursuant thereto. Any fees or deposits required by this chapter shall not relieve the applicant from compliance with any applicable business license required.

SECTION 13-3. PERMIT REQUIRED FOR OPERATION OF MASSAGE ESTABLISHMENT.

- (a). *Required.* No health club or massage establishment shall operate without first obtaining a permit.
- (b). *Qualifications.* No permit shall be issued for any health club or massage establishment except to an owner or manager who is either:
 - (1) A physician or chiropractor;
 - (2) A registered nurse with at least two (2) years' nursing experience;
 - (3) A licensed practical nurse with at least four (4) years' nursing experience; or
 - (4) A registered physical therapist.
 - (5) A massage therapist holding a permit in accordance with Section 13-3.3 of this ordinance or who is otherwise licensed as a “certified massage therapist” by the State Board of Nursing for the Commonwealth of Virginia;
 - (6) Or employs a physician or chiropractor; a register nurse with at least two (2) years nursing experience; a licensed practical nurse with at least four (4) years nursing experience; a registered physical therapist; or a massage therapist holding a permit in accordance with Section 13-3.3 of this odinance, on the premises to which the permit is issued.

MESSAGE SALONS, HEALTH CLUBS, ETC.

- (c). *Forms.* Permit forms are obtainable and are processed in the offices of the chief of police. (See §13-3.3)
- (d). *Inspections required.* Upon receipt of said application, the chief of police shall refer the application to the building official, the fire department, and the zoning administrator, each of which shall, within a period of twenty-one (21) days from the date of application, review records and make an inspection of the premises proposed to be used as a massage establishment and make a written recommendation to the chief of police concerning compliance with the law.
- (e). *Relocation procedure.* A change of location of a licensed massage establishment may be approved by the chief of police provided all applicable provisions of the Code, including this chapter, are complied with and a change of location fee of fifty dollars (\$50.00) has been paid to the city treasurer.

(Ord. No.2012-35, 1-8-13)

SECTION 13-3.1. ADDITIONAL PERMITS REQUIRED.

- (a) It shall be unlawful for any person as defined in paragraph (c) of subsection 13-3.5 hereof to own or manage a massage parlor or health club as defined herein, or to give a massage within the City, or to offer to give a massage elsewhere if such offer is made within the City, or for any masseur or masseuse to give or offer a massage without a valid, non-suspended permit issued pursuant to this chapter. Said permit must be conspicuously posted in the massage parlor or health club; so that the permit may be readily seen by persons entering the premises in the public room thereof or, if said massage is given in other than a health club or massage establishment, said permit must be available on request.
- (b) It shall be unlawful for any person as defined in subsection (1) herein to establish, maintain or operate a health club or massage establishment in which he or a masseur or masseuse who does not have a valid non-suspended permit pursuant to this chapter performs, or offers to perform, or where it is offered to perform massages, or to offer a massage in the City or elsewhere except as provided in this chapter.

SECTION 13-3.2. PERMIT REQUIRED FOR MESSAGE TECHNICIAN.

No massage technician, masseur or masseuse shall administer a massage in a massage establishment without a valid, non-suspended permit issued pursuant to this chapter.

WINCHESTER CODE

SECTION 13-3.3. MASSAGE TECHNICIAN PERMIT FEE; TERM; HEALTH CERTIFICATE REQUIRED.

- (a) Every person conducting or engaging in the administration of massages in a massage establishment shall pay an annual permit fee of twenty-five dollars (\$25.00), which permit shall be renewed one year from date of issue.
- (b) No person shall practice any of the services of a massage technician without a certificate of good health issued by a duly licensed physician, which certificate shall be renewed every six (6) months.

SECTION 13-3-4. MASSAGE TECHNICIAN PERMIT APPLICATION.

- (a) Each application for a massage technician permit shall be upon a form provided by the chief of police. Each form shall contain the following information:
 - (1) The applicant's full name, residential address, and residential telephone number.
 - (2) The name and address of the massage establishment where the applicant is to be employed and the name of the owner of same
 - (3) The names and addresses of any and all previous massage establishments where applicant has been employed as a massage technician.
 - (4) The criminal record, if any, other than misdemeanor traffic violations, of the applicant.
 - (5) Whether any permit to perform as a massage technician has previously been denied the applicant or revoked and, if so, the circumstances of such denial or revocation.
 - (6) A complete set of the applicant's fingerprints, which shall be taken by the chief of police or his agent.
 - (7) Written proof that the applicant is eighteen (18) years of age or older.
 - (8) Proof of training required by subsection 13-4 of this chapter.
- (b) Each holder of a massage establishment permit shall report to the chief of police any change in any of the information required in paragraph (a) of this section, such report to be made within fourteen (14) days of learning of the change. Failure to report a change after learning of it shall be grounds for revocation of the permit.

MESSAGE SALONS, HEALTH CLUBS, ETC.

SECTION 13-3.5. INVESTIGATION OF APPLICANT FOR MASSAGE ESTABLISHMENT PERMIT OR MASSAGE TECHNICIAN PERMIT; GROUNDS FOR DENIAL OF APPLICATION.

- (a) *Application; renewals.* Any person desiring a permit hereunder shall make application to the chief of police on forms provided by him. Each permit application shall be accompanied by an application fee of fifty dollars (\$50.00) for a massage establishment permit and/or twenty-five dollars (\$25.00) for a massage technician permit, payable to the city treasurer. Each application shall contain the name, address, social security number, telephone number, last previous address, date of birth, height, weight, current and last previous employment of the applicant.

In addition, such application shall include a sworn statement as to whether or not the applicant has been convicted, pleaded nolo contendere, or suffered a forfeiture of any felony charge or on a charge of violating any provisions included in Chapter 8, Article 3, Title 18.2, Sections 18.2-344 *et seq.* and Article 5, Section 18.2-372 *et seq.* of the Code of Virginia, which laws relate to sexual offenses, or on a charge of violating a similar law of any other jurisdiction or on a charge of violating any provision of this chapter or similar ordinance in any other jurisdiction. The application shall state thereon that "it is unlawful for any person to make a false statement on this application, and discovery of a false statement shall constitute grounds for denial of an application or renovation of a permit".

Each applicant shall be photographed and have his or her fingerprints taken, which fingerprints and photograph shall constitute part of the application. The permit shall be valid for a period of one year, and it may be renewed for additional one-year periods upon the filing of a new application and payment of the application fees. All provisions of this chapter shall apply to renewals in the same manner as they apply to application for a granting of initial permits.

- (b) *Investigation.* Upon receipt of the application fee as provided by the preceding sections, the chief of police shall make or cause to be made a thorough investigation relative to the application. The chief shall deny any application for a massage establishment permit or a massage technician permit under this chapter after notice and hearing if the chief finds that the applicant has been convicted, pleaded nolo contendere, or suffered a forfeiture on any felony charge or on a charge of violating any provision included in Chapter 8, Article 3, Title 18.2, Section 18.2-344 *et seq.* and Article 5, Section 18.2372 *et seq.* of the Code of Virginia, which laws relate to sexual offenses, or on a charge of violating any similar law of any other jurisdiction.

The making of a false statement on the application as provided for in this chapter shall also be grounds for denial of this permit. Notice of the hearing before the chief of police for denial of this application shall be given in writing, setting forth

WINCHESTER CODE

the grounds of the proposed denial of permit and the time and place of the hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least five (5) days prior to the date set for the hearing. The chief of police shall submit his decision to the applicant within five (5) days of his decision or within thirty (30) days of his receipt of the application, whichever is the sooner.

- (c) *Revocation.* The chief of police shall revoke the permit of any person after notice and hearing if the chief finds that such person has been convicted, pleaded nolo contendere, or suffered a forfeiture of any felony charge or on a charge of violating any provision included in Chapter 8, Article 3, Title 18.2, Section 18.2-344 *et seq.* and Article 5, Section 18.2-372 *et seq.* of the Code of Virginia, which laws relate to sexual offenses, or on a charge of violating a similar law of any jurisdiction or on a charge of violating any provision of this chapter or similar ordinance in any other jurisdiction.

The permit shall also be revoked by the chief if he finds after notice and hearing that any permit holder has made a false statement on the application provided for herein. Notice of the hearing before the chief for revocation of the permit shall be given in writing, setting forth the grounds of the proposed revocation and the time and place of the hearing. Such notice shall be mailed by certified mail to the permit holder's last known address at least five (5) days prior to the date set for the hearing.

- (d) *Failure to display.* It shall also be unlawful for any person to purport to hold a valid permit when they do not, or to fail to display upon request to any police officer corroborating identifying evidence that he or she is, in fact, the person displaying the permit; or fail to display the permit upon request by a police officer. It shall likewise be an automatic cause for revocation of the permit of any owner or manager of a massage establishment or health club should they have two (2) or more violations of these provisions in their establishment within a twelve-month period.

- (e) *Person defined.* A "person" applying for a permit hereunder shall include a partnership or association and any partner or member thereof, or if the applicant is a corporation it shall include any officer, director or manager thereof or shareholder owning ten (10) percent or more of its stock, and shall likewise include members of both sexes.

- (f) *Appeal.* In the event the chief of police should deny or revoke any permit hereunder the applicant shall have an automatic right to appeal such denial or revocation to the city manager. The city manager shall hold a hearing with the same procedural guidelines as set forth above regarding hearings before the chief of police within thirty (30) days of the date of denial or revocation by the chief of police. The city manager shall render his decision after a review of the findings of the chief of police and any other evidence submitted to him. The city manager

MASSAGE SALONS, HEALTH CLUBS, ETC.

shall submit his decision to the applicant or permit holder within five (5) days of his decision or within thirty (30) days of the hearings, whichever is sooner.

- (g) *Non-transferability.* No permit issued under this chapter shall be transferable from one person to another.
- (h) *Right of entry.* The director of health, the city building official, the fire department, the chief of police, and the zoning administrator are hereby authorized to enter, examine, and survey during business hours any premises in the City for which a massage establishment permit has been issued pursuant to this chapter for the purpose of enforcing the provisions of this chapter, and for other official purposes. This section shall not restrict or limit the right of entry vested in any law enforcement agency.

SECTION 13-4. TRAINING OF MASSEUR OR MASSEUSE OR MASSAGE TECHNICIAN.

No person shall give or offer to hold oneself out to offer a massage as a masseur or masseuse within the meaning of this chapter or employ, or engage as an independent contractor, any masseur or masseuse who gives, or offers or holds oneself out to offer, a massage unless such person shall have satisfactorily completed a course or courses of study in body massage in an approved school of instruction or training within the criteria and guidelines set forth below:

- (1) Said courses shall pertain to anatomy, physiology, hygiene, first aid, exercise therapy, massage techniques, and related aspects of the art and science.
- (2) A course in study in body massage shall constitute one thousand (1,000) hours of study in connection with an approved school, five hundred (500) hours of which shall be accredited instructional hours pertaining to:
 - (a) Classroom or clinical training in therapeutic massage and reflexology techniques;
 - (b) Classroom or clinical instruction on contra-indications for massage;
 - (c) Classroom or clinical or laboratory instruction to develop a knowledge of the anatomy and physiology of the systems of the body, with emphasis on the muscular and skeletal system.
- (3) The additional five hundred (500) hours may be accomplished simultaneously with the academic, clinical, classroom or laboratory training by virtue of what is commonly known as "on the job training", or can be verified to by an employer of a masseur or masseuse by sworn affidavit as having accomplished during or before the effective date of this chapter.

WINCHESTER CODE

- (a) Such training shall pertain to understanding the benefits of massage; and
 - (b) Assisting the students in developing an awareness of massage as a therapeutic process.
- (4) Any school or educational institution licensed to do business as a school or educational institution in the state in which it is located and providing requisite training herein provided for shall constitute an approved school. Any school recognized by or approved by or affiliated with the American Massage and Therapy Association, Inc. shall constitute an approved school.
- (5) Compliance with this section shall first be determined by the chief of police with the same rights of appeal and hearing to the city manager as elsewhere granted in this chapter.

SECTION 13-5. EQUIPMENT STANDARDS.

- (a) All tables, tubs, shower stalls, and floors, except reception and administrative areas, shall be made of non-porous materials which may be readily disinfected.
- (b) Closed containers shall be provided for wet towels and waste materials.

SECTION 13-6. BUILDING STRUCTURE AND LAYOUT.

- (a) No health club or massage establishment shall begin operations until the building occupied or to be occupied shall have been approved by the city building official as to the requirements of the building, plumbing, electric and fire prevention codes, and any other requirements of this chapter.
- (b) Any applicant for a permit to operate a health club or massage establishment shall submit to the city planner plans and specifications of the quarters proposed to be occupied. Such plans shall show details of entrances, partitions, windows, openings, ventilation, plumbing or fixtures, water supply and waste and vent connections.
- (c) Each health club or massage establishment shall be equipped with separate and readily available toilet and lavatory facilities for patrons, and separate and readily available toilet and lavatory facilities for personnel. Each operating area shall be equipped with a hand lavatory.
- (d) Either the health club or massage establishment quarters or the floor of the building on which same are located shall be equipped with a service sink for custodial services.

MASSAGE SALONS, HEALTH CLUBS, ETC.

- (e) No exterior or interior doors in any health club or massage establishment shall be equipped with any remotely controlled locking device.

SECTION 13-7. SANITATION AND HYGIENE.

- (a) All equipment, shower stalls, toilets, lavatories and any other such accouterments of the establishment shall be regularly treated with disinfectants, and shall be maintained in a clean and sanitary condition at all times.
- (b) Health, plumbing, electric and other inspectors shall be given access to any part of the quarters of a health club or massage establishment for purposes of inspections at all reasonable times.
- (c) No person shall practice any of the services of a health club or massage establishment without a certificate of good health issued by a duly licensed physician, commensurate with the nature of the services rendered. Such certificate shall be renewed every six (6) months.
- (d) No health club or massage establishment shall knowingly serve any patron infected with any fungus or other skin infections; nor shall service be performed on any patron exhibiting skin inflammation or eruptions; provided, that a duly licensed physician may certify that a person may be safely served, prescribing the conditions thereunder.
- (e) All personnel shall wash his or her hands in hot running water, using a proper soap or disinfectant, before giving any service or treatment to each separate patron.
- (f) All towels and tissues, all sheets or other coverings shall be used singularly for each patron, and discarded for laundry or disposal immediately after use.
- (g) Non-disposable tools of the trade shall be disinfected after use upon one patron.

SECTION 13-8. SLEEPING QUARTERS.

No part of any quarters of any health club or massage establishment shall be used for, or connected with, any bedroom or sleeping quarters; nor shall any person sleep in such club or establishment except it be for limited periods incidental to and directly related to a massage or bath. This provision shall not preclude the location of a health club or massage establishment in separate quarters of a building housing a hotel or other separate businesses or clubs.

WINCHESTER CODE

SECTION 13-9. REPEALED. (Ord. No. 2012-19, 7-10-12)

SECTION 13-10. PROHIBITED ACTS IN VIOLATION OF STATE LAW, THIS CODE, ETC.

- (a) No owner or manager of a health club or massage establishment shall tolerate in his or her club or establishment any activity or behavior prohibited by the laws of this commonwealth, particularly, but not exclusive of, Chapter 8, Article 3, Title 18.2, Sections 18.2-344 *et seq.*, proscribing prostitution, sodomy, a bawdy place, adultery, fornication and any lewd and lascivious cohabitation, etc.; and Article 5 thereof, Section 18.2-372 *et seq.*, being the state statute on obscenity, dealing with shameful or morbid interest in nudity or sex, which appeals to prurient interest, and which covers obscene items, exhibitions, performances, indecent exposure, illicit photographs or photographic activity, and illicit modeling.
- (b) No owner or manager of a health club or massage establishment shall tolerate in his or her club or establishment any activity or behavior which violates this Code, particularly, but not exclusive of, those sections which parallel the state statutes on immorality and obscenity detailed above.
- (c) Any conviction of any employee of a health club or massage establishment of a violation of the foregoing mentioned statutes and codes shall devolve upon the owner or manager of such club or establishment, it being specifically declared hereby that following such conviction of an employee the owner or manager of the health club or massage establishment shall be prosecuted as an accessory to such violation.
- (d) No provision of this chapter shall apply to police officers while in performance of official duties relating to any violation of this chapter or of any law of the United States, the Commonwealth of Virginia, or the City of Winchester.

MASSAGE SALONS, HEALTH CLUBS, ETC.

SECTION 13-11. SEVERABILITY.

If any of the sections, paragraphs, sentences, clauses or phrases of this chapter shall be declared unconstitutional or invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the chapter in its entirety or any of the remaining sections, paragraphs, sentences, clauses, and phrases.

SECTION 13-12. PENALTIES.

- (a) Any person convicted of violating any of the provisions of this chapter shall be guilty of a Class 2 misdemeanor for the first offense. Upon conviction of any subsequent offense, he or she shall be guilty of a Class 1 misdemeanor.
- (b) Upon the first conviction by any court for violation of any provision of this chapter, the chief of police may revoke his or her license to engage in business under this chapter for a period of one full year from the date of conviction. Such revocation shall be mandatory upon a second conviction. (Ord. No. 005-82, 3-09-82; Ord. No. 010-85, 7-09-85)

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