CHAPTER 115: MASSAGE ESTABLISHMENTS

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§ 115.01 PURPOSE AND OBJECTIVE.

The therapeutic application of massage is one of the oldest healing arts known to humankind, a practice which can provide many benefits to an individual's state of health and well-being. In the interest of public health, safety, welfare and morals, and to protect the public from unqualified practitioners and unethical businesses, massage establishment registration and message therapist registration provisions and regulations specified in this chapter are hereby adopted.

§ 115.02 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.

BUSINESS OR PROFESSION OF MASSAGE THERAPY. Includes the massage or treatment of any person for a fee or for other good or valuable consideration from the person treated.

MASSAGE, THERAPEUTIC MASSAGE, BODYWORK. Synonymous with MASSAGE THERAPY.

MASSAGE THERAPIST. Any person, whether male or female, who is engaged in the practice of massage therapy, and who receives compensation for his or her services.

MASSAGE THERAPY. Any form of manipulation of the muscles, skin or other soft tissue of the body, by kneading, stroking, pressing, tapping or movement of extremities, whether applied by hand, arm or foot or aided by mechanical device.

MASSAGE THERAPY ESTABLISHMENT. Any business or establishment wherein massage therapy is practiced, including establishments commonly known as health clubs, physical culture studios, massage clinics or similar establishments by whatever name designated.

§ 115.03 EXEMPTIONS.

(A) The practice of massage therapy shall not include and is distinct from the practice of medicine, surgery, osteopathy, nursing, chiropractic, physical therapy or podiatry. Requirements of this chapter shall have no application to and effect upon:

(1) Physicians, surgeons, chiropractors, osteopaths, physical therapists or podiatrists duly licensed to practice in this state, and registered or licensed practical nurses governed by the state nursing practices act;

(2) Athletic directors or trainers who are affiliated with an approved educational institution or professional sports team and whose work is limited to athletic team members; or

(3) Licensed cosmetologists, barbers or beauty culturists who do not give or hold themselves out to give massage treatments other than are customarily given in the establishments, solely for the purpose of beautification.

(B) No other persons not duly qualified and licensed as a massage therapist under this chapter, whether employed by physicians, chiropractors, osteopaths, podiatrists, or not, may render massage therapy as a professional or business endeavor or for or in exchange of any type of valuable consideration or remuneration.

§ 115.04 ~~LICENSING~~ REGISTRATION OF MASSAGE THERAPISTS.

(A) No person shall engage in the business or profession of massage therapy unless the person shall have first applied for and received a ~~privilege license~~ massage therapy registration as required by this section.

(B) Applicants must provide the Tax Collector with a copy of their North Carolina Board of Massage and Bodywork Therapy state license. This requirement shall apply to all applicants, and no individual seeking to practice massage therapy in the town shall be exempted therefrom except as expressly provided in § 115.03.

(C) The application for ~~the license~~ a massage therapist registration required by this section shall be upon a form approved by the town and shall be filed with the Tax Collector for the town. If the therapist is also the business owner, two additional registration forms are required as explained in § 115.05. The message therapist registration application shall be given under oath and shall contain the following information:

(1) The name, age and residence address of the applicants;

(2) The North Carolina Board of Massage and Bodywork Therapy state license number, effective and expiration date;

(3) A complete statement of the previous businesses or occupations of the applicant for the 2 years immediately preceding the date of the application;

(4) The date and place of the applicant's birth and the residence address or addresses of the applicant for the 3 years immediately preceding the date of application;

(5) A complete statement of all convictions of the applicant for any felonies and any offense involving sexual misconduct, whether for this jurisdiction or any other, including G.S. §§ 14-177 through 14-199, and G.S. §§ 14-203 through 14-208, or any federal statute relating to prostitution, or of any governmental unit concerning or related to the business or profession of massage; and

Statutory reference:

G.S. §§ 14-204.1,14-205, 14-207, and 14-208 have been repealed. New §§ 14205.1 through 14-205.4 have been enacted.

(6) A complete statement of any revocation of any license or registration granted by any governmental unit to the applicant to engage in the business or profession of massage therapy.

(D) Upon payment of the ~~application~~ registration fee, as set out in § 115.09, and upon submission of all the information required by the application under this chapter, the Tax Collector shall transmit a copy of the application to the Police Department for an investigative report. The Police Department shall report the results of the investigation within a reasonable time, not to exceed 30 days. A ~~license~~ massage therapist registration shall be granted immediately if all requirements described in this chapter are met, unless it appears that any applicant is under the age of 18 years, has deliberately falsified the application, has had a previously issued license or registration to engage in the business or profession of massage revoked, or the record of the applicant reveals a conviction as set out in division (C)(5) of this section.

(E) It shall be unlawful for anyone to perform massage therapy upon a person under the age of 18 years unless consent therefor has been given by the person's parent, guardian or custodian.

Penalty, see § 115.99

§ 115.05 ~~LICENSING~~ BUSINESS REGISTRATION OF MASSAGE THERAPY ESTABLISHMENTS.

(A) No person shall operate a massage therapy establishment unless the person shall have first ~~applied for and received~~ obtained a ~~the~~ ~~privilege license~~ business registration from the Town ~~provided by this section~~ and applied for and received the massage therapy establishment registration provided by this section.

(B) Every application for ~~the~~ a massage therapy establishment registration ~~privilege license~~ prescribed in this section shall ~~be upon a~~ include two forms approved by the town and supplied by and filed with the Tax Collector: the business registration, which is required for any business operating within the Town limits, and a registration application for the massage therapy establishment. If the business owner is also working as a massage therapist, a massage therapist registration application is required. In addition, every massage therapist working at the business is required to have an individual massage therapist registration. Every message therapy business establishment registration and message therapist registration 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 the person; if the applicant is a partnership, corporation or association, the name and residence address of all principal officers of the partnership, corporation or association;

(2) The address of the premises where the massage therapy establishment shall be located;

(3) A complete statement of all convictions of any person whose name is required to be given in division (B)(1) above for any offense as previously set out herein;

(4) A complete statement of any revocation by any governmental unit of any license or registration to operate a massage therapy establishment or to engage in the business or profession of massage therapy held by any person whose name is required to be given in division (B)(1) of this section; and

(5) The name and address of any massage therapy establishment or other establishment owned or operated by any person whose name is required to be given in division (B)(1) of this section wherein the business or profession of massage is carried on.

(C) The Tax Collector shall transmit a copy of the application to the police for an investigative report and to the ~~inspections division~~ Planning and Zoning department of the town to determine if the proposed establishment is in compliance with all zoning ~~and building regulations and~~ ordinances. ~~and to the local Fire Marshal to determine compliance with any law relating to fire protection.~~ The police and ~~the Fire Marshal~~ Planning and Zoning department shall, within a reasonable time, not to exceed 30 days, report the results of their examinations to the Tax Collector.

(D) An application in proper form, accompanied by all reports required herein, shall be submitted to the Town Council, which shall approve the application if the Town Council determines that:

(1) The application contains no misstatement of fact;

(2) The applicant and any person having legal or beneficial ownership interest in the proposed establishment is over the age of 18 years and has not been convicted of any crime involving sexual misconduct, as set forth in this chapter;

(3) The proposed establishment conforms to all requirements of applicable zoning ordinances, ~~building and fire prevention codes~~; and

(4) The applicant or any person having a legal or beneficial ownership or interest in the proposed establishment has not, for the 3-year period preceding the application, had a previously issued license or registration for engaging in the business or profession of massage or a license or registration to operate a massage business revoked.

Penalty, see § 115.99

§ 115.06 POSTING OF ~~LICENSE~~ REGISTRATION.

(A) Every massage therapist shall post the ~~license~~ massage therapist registration required by this chapter in his or her work area at all times.

(B) Every person ~~licensed~~ registered under § 115.05 as a massage therapy establishment shall display the business registration and massage therapy establishment registration in a prominent place at all times.

§ 115.07 REVOCATION.

(A) No ~~license~~ registration(s) under this chapter shall be revoked until after due notice and a hearing shall have been held before the Town Council to determine just cause for revocation. The burden of proving just cause for revocation shall be on the town. Notice of the hearing shall be given in writing and served at least 10 days prior to the date of the hearing thereon. The notice shall state the grounds of the complaint against the holder of the ~~license~~ registration and shall designate the time and place where the hearing will be held.

(B) The notice shall be served by the Police Department upon the ~~license~~ registration holder by delivering the same personally or by leaving the notice at the place of business or residence of the ~~license~~ registration holder in the custody of a person of suitable age and discretion. In the event the ~~license~~ registration holder cannot be found, and the service of the notice cannot be otherwise made in the manner herein provided, a copy of the notice shall be mailed, registered, postage fully prepaid, addressed to the ~~license~~ registration holder at his or her place of business or residence at least 10 days prior to the date of the hearing.

(C) The ~~license~~ registration of a massage therapist issued pursuant to this chapter may be revoked upon 1 or more of the following grounds:

(1) The ~~licensee~~ registrant has violated any provision of this chapter;

(2) The ~~licensee~~ registrant has been convicted of a crime involving sexual misconduct, including those set out in § 115.04(C)(5);

(3) The ~~licensee~~ registrant is guilty of fraudulent, false, misleading or deceptive advertising, including the use of the term MASSAGE THERAPY or MASSAGE to describe, promote or advertise any type of business activity or service offered which is expressly not massage therapy, or has otherwise fraudulently engaged in practicing massage therapy;

(4) The ~~licensee~~ registrant has fraudulently obtained a ~~license~~ registration pursuant to the provisions of this chapter;

(5) The ~~licensee~~ registrant allows the use of his or her ~~license~~ registration by an ~~unlicensed~~ unregistered person; or

(6) The ~~licensee~~ registrant is addicted to the habitual use of alcohol, narcotics or other drugs, to an extent as to incapacitate the person for the safe and normal performance of his or her professional duties.

(D) ~~A license~~ The registration of a massage therapy establishment issued pursuant to this chapter may be revoked upon 1 or more of the following grounds:

(1) The ~~licensee~~ registrant has violated any provision of this chapter;

(2) The ~~licensee~~ registrant, or any agent of the ~~licensee~~ registrant, employs and/or permits any individual to perform massage therapy on the premises of the ~~licensee's~~ registrant's massage therapy establishment when that individual has not been issued the ~~privilege license~~ registration required by § 115.04;

(3) The ~~licensee~~ registrant, or the legal or beneficial owner of any interest of the ~~licensee~~ registrant, is convicted of any crime involving sexual misconduct, including but not limited to those set out in § 115.04(C)(5);

(4) Any employee of the ~~licensee~~ registrant is convicted of any crime involving sexual misconduct, including but not limited to those set out in § 115.04(C)(5);

(5) The ~~licensee~~ registrant is guilty of fraudulent, false, misleading or deceptive advertising, including the use of the term MASSAGE THERAPY or MASSAGE to describe, promote or advertise any type of business activity or service offered which is expressly not massage therapy, or has otherwise fraudulently engaged in the business or profession of massage therapy; or

(6) The ~~licensee~~ registrant violates any zoning, building or fire prevention ordinance.

Penalty, see § 115.99

§ 115.08 EMPLOYEES.

(A) No person ~~licensed~~ registered under § 115.05 as a massage therapy establishment shall allow or permit any person to massage or treat any person upon the premises operated by the ~~licensee~~ registrant or in any other location under his or her authority or at his or her direction unless the person giving the massage or treatment is ~~licensed~~ registered under this chapter pursuant to § 115.04.

(B) Violation of this section shall be grounds for revocation of the ~~license~~ registration issued to the violator.

§ 115.09 FEES.

(A) The application fee for a ~~privilege license~~ registration for a massage therapy establishment shall be an amount to be determined by Council from time to time.

(B) The application fee for a massage therapist shall be an amount to be determined by Council from time to time.

(C) Under this chapter, a massage therapist in business as a sole practitioner shall only be required to pay the application fee set out in division (A) above.

(D) The business registration fee for a massage therapy establishment shall be $25 in accordance with Town Ordinance Section 110.

§ 115.10 GRANDFATHER CLAUSE.

(A) Any person who has been engaged in the business or profession of massage therapy in this town for 3 or more continuous years may be granted a ~~license~~ registration pursuant to the provisions of this chapter if:

(1) Proof of continuous service is provided to the Tax Collector for the town.

(2) Three letters of reference from massage therapists ~~licensed~~ regulated under this chapter or other licensed health care professionals, attesting to the sound moral character, professional qualifications and the competence of the person, are provided to the Tax Collector.

(3) An appropriate application is submitted under this chapter, and the individual pays the required ~~license~~ registration fee(s).

(B) In addition, any person previously ~~licensed~~ registered to engage in the business or profession of massage therapy in the town shall be exempt from the requirements of § 115.04(C), and shall be granted a ~~license~~ registration pursuant to the provisions of this chapter if:

(1) Proof of previous ~~licensing~~ registration is provided to the Tax Collector;

(2) The person pays the application fee(s); and

(3) The ~~license~~ registration is renewed as required in this chapter on the first anniversary of the original issuance of the ~~license~~ registration and annually on July 1st for the business registration.

§ 115.11 RECIPROCITY.

Any person who has been duly licensed in another state or municipality to practice massage therapy, which state or municipality has and maintains a standard of practice substantially the same or more stringent than that maintained under this chapter, and who has been lawfully and continuously engaged in the practice for 2 or more years immediately before filing his or her application to practice under this chapter, and who shall submit a duly attested license from the regulatory authority of the state or municipality in which he or she is registered, certifying to the fact of his or her registration, may be granted a massage therapist ~~license~~ registration to practice without otherwise being required to qualify.

§ 115.99 PENALTY.

(A) A notice of violation shall be issued to the individual or business notifying them that a violation of this section must be corrected within 30 days.

(B) If the violation is still not corrected within the prescribed time period, then a citation in the amount of $50 shall be issued per violation.

(C) If the violation is still not corrected following issuance of the aforementioned citations, then the town may pursue an injunction in the appropriate court of law commanding the defendant to correct the violation.

(Am. Ord. passed - -)