

AN ORDINANCE LICENSING AND REGULATING MASSAGE BUSINESSES

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE
COUNTY OF RANDOLPH:

Section 1. PURPOSE AND OBJECTIVE.

To define, regulate, prohibit, or abate acts or conditions detrimental to the health, safety, or welfare of the citizens of Randolph County, or to the peace and dignity of the County, the Commissioners of Randolph County do enact this ordinance regulating the carrying on of the business, trade or profession of massage therapy 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 therapy or physical manipulation of the human body is carried on or practiced. The objective is to permit only the profession of massage or health therapy massage as authorized under this ordinance.

Section 2. DEFINITIONS.

Unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:

- (a) "Massage" means the manipulation of the muscles, skin, or other soft tissues of the body exclusive of the head and neck, by rubbing, kneading, stroking, pressing, tapping, or movement of extremities, whether applied manually or assisted by mechanical device.
- (b) "Massage Therapy, Therapeutic Massage, Bodywork" are synonymous with massage.
- (c) "Massage Therapist" means any person, whether male or female, who is engaged in the practice of massage therapy, and who receives compensation for his or her services.
- (d) "Massage Business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or similar establishments by whatever name designated.
- (e) "Private Parts" means the penis, scrotum, mons veneris, vulva, or vaginal area of a person.

Section 3. EXEMPTIONS.

The provisions of this ordinance 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, licensed physical therapist, or chiropractor in connection with the practice of medicine, chiropractics, or osteopathy.

Section 4. HOURS OF OPERATION.

- (a) No person licensed as a massage therapist shall massage or treat any person, or engage in the business or profession of massage therapy, before 7:00 a.m. or after 10:00 p.m. prevailing time.
- (b) No person licensed under the provisions of this ordinance shall admit customers or prospective customers, or remain open for business, or allow, permit, or condone the administration of massage therapy or treatment of any person upon the premises before 7:00 a.m. or after 10:00 p.m., prevailing time, except upon written order by a licensed physician, osteopath, or chiropractor, such order being dated, and a true copy of such order being in the possession of the licensee before administration of any massage therapy or treatment.
- (c) No person in charge of managing a massage therapy business upon the premises shall allow, permit, or condone any massage therapy or treatment of any person before 7:00 a.m. or after 10:00 p.m., prevailing time.
- (d) A violation of this section shall be grounds for revocation of any license issued under this ordinance.

Section 5. SEXUAL CONTACT PROHIBITED.

- (a) No person licensed as a massage therapist under Section 7 hereof shall massage or offer to massage the private parts of another person upon the licensed premises.
- (b) No person, corporation, partnership, or association licensed under Section 8 hereof shall allow, permit, or condone any person to massage or offer to massage the private parts of another person upon the licensed premises.
- (c) No person licensed under Section 7 hereof shall massage any individual in a manner which is reasonably calculated to sexually stimulate or arouse the person being massaged. Intentional touching of the private parts of a person being massaged constitutes prima facie evidence of an attempt to sexually arouse or stimulate such person.

(d) No person, corporation, partnership, or association licensed under Section 8 hereof shall allow, permit, or condone any person to massage any individual in a manner which is reasonably calculated to sexually stimulate or arouse the person being massaged. Intentional touching of the private parts of a person being massaged constitutes prima facie evidence of an attempt to sexually arouse or stimulate such person.

(e) A violation of this section shall be grounds for revocation of any license issued under this ordinance.

Section 6. PATRONAGE BY MINORS.

(a) No person licensed as a massage therapist under Section 7 hereof shall administer massage therapy or treat any person under the age of 18 except upon written order by a licensed physician, osteopath, chiropractor, registered physical therapist, or legal guardian, such order being dated and in the possession of the massage therapist giving the massage or treatment.

(b) No person, corporation, partnership or association licensed under Section 8 hereof shall allow, permit or condone the administration of massage therapy or treatment of any person under the age of 18 upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, registered physical therapist, or legal guardian, such order being in the possession of the licensee before administration of any massage therapy or treatment.

(c) A violation of this section shall be grounds for revocation of any license issued under this ordinance.

Section 7. LICENSING OF MASSAGE THERAPISTS.

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

(b) Applicants are required to have a minimum of 500 hours of professional training in massage therapy, to be obtained through an institute or school of massage therapy, college level courses, workshops, and seminars, or apprenticeship with a licensed massage therapist. Such training, whether from one or several sources, must meet the following criteria:

- (1) At least 50% of the total training provided by a licensed massage therapist to be in hands-on massage therapy techniques, massage treatment principles and theory;
- (2) At least 20% of total training to be in the area of anatomy and physiology; and
- (3) The balance of the total training to be in other health-related areas, such as hydrotherapy, movement, and nutrition.

(c) The application for the license required by this section shall be upon a form approved by

the County Manager and shall be filed with the County Manager. Such application shall be given under oath and shall contain the following information:

- (1) The name, age and residence of the applicant;
- (2) A complete statement of the previous business or occupation of the applicant for the two years immediately preceding the date of the application;
- (3) The date and place of applicant's birth and the residence address or addresses of the applicant for the three years immediately preceding the date of the application.
- (4) A complete statement of all convictions of the applicant for any offense involving sexual misconduct, including but not limited to N.C.G.S. § 14-177 through N.C.G.S. § 14-202.1, Article 26 (offenses against public morality and decency) and N.C.G.S. § 14-203 through 14-208, Article 27 (prostitution), or of any violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage.
- (5) 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.
- (6) Applicant must furnish the following proof of training:
 - (a) A diploma or certificate of graduation from an institute or school of massage whose curriculum is approved by the American Massage Therapy Association; or
 - (b) A diploma, transcript, or certificate of completion from a school or other institution of learning, or a workshop/seminar leader, which indicates the subjects studied and the number of hours of hands-on experience and classroom hours taken.
- (7) In addition to subdivisions (6)(a) or (b), all applicants shall have submitted two written notarized recommendations from two members in good standing with the American Massage Therapy Association or from two persons or instructors from other schools or institutions of learning, attesting to the qualifications and good standing of any such applicant for a license hereunder; and
- (8) The County reserves the right to request submission of any additional information deemed necessary to process any such application.

(d) Upon payment of the application fee, as set out in Section 13 herein, and upon submission of all the information required by the application under this section, the County Manager shall transmit a copy of the application to the Sheriff's Department for an investigative report which shall contain a background investigation regarding any convictions for crimes of sexual misconduct or other offenses against public morality. The Sheriff's Department shall report the results of the investigation to the County Manager within a reasonable time, not to exceed 45 days. Unless it appears that any such applicant is under the age of 18, has deliberately falsified the application, has had a previously issued license for engaging in the business or profession of massage revoked, or the record of such applicant reveals a conviction as set out in this section, a license shall be granted immediately by the County Manager, if all requirements described herein

are met.

- (e) Grounds for revocation shall include, but not be limited to, the following:
 - (1) The licensee has violated any provision of this ordinance;
 - (2) The licensee has been convicted of a crime involving sexual misconduct, or has become a habitual criminal offender;
 - (3) The licensee is guilty of fraudulent, false, misleading or deceptive advertising, including the use of the term "massage" to describe, promote, or advertise any type of business activity or service offered which is expressly not massage therapy as herein defined;
 - (4) The licensee has fraudulently obtained a license pursuant to this ordinance;
 - (5) The licensee is addicted to the habitual use of alcohol, narcotics, or other drugs, to such an extent as to incapacitate such person for the safe and normal performance of his or her professional duties; or,
 - (6) The licensee allows the use of his or her license by an unlicensed person.
- (f) All licenses issued hereunder are nontransferable.

Section 8. LICENSING OF MASSAGE THERAPY ESTABLISHMENTS.

- (a) No person, partnership, corporation, or association shall operate a massage therapy establishment as herein defined unless such person, partnership, corporation, or association shall have first applied for and received the privilege license provided by this section.
- (b) Every application for the privilege license prescribed herein shall be upon a form approved by the County Manager and shall be filed with the County Manager. 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 of such person. If the applicant is a partnership, corporation, or association, the name and residence addresses of all persons having any legal or beneficial interest in such applicant;
 - (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 subdivision (1) above for any offense as previously set out in Section 7 of this ordinance.
 - (4) A complete statement of any revocation by any governmental unit of any license to operate a massage therapy establishment or to engage in the business or profession of massage held by any person whose name is required to be given in subdivision (1) above;
 - (5) The name and addresses of any massage establishment or any other establishment

- owned and operated by any person whose name is required to be given in subdivision (1) above wherein the business or profession of massage is carried on;
- (6) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant; and
 - (7) The County reserves the right to request submission of any additional information deemed necessary to process any such application.

(c) The County Manager shall transmit a copy of the application to the Sheriff's Department for an investigative report and to the Planning and Zoning Department to determine compliance with all zoning regulations and ordinances. The Sheriff and the Zoning Administrator shall, within a reasonable time, not to exceed 45 days, report the results of their examinations to the County Manager.

(d) An application in proper form, accompanied by all reports required by this section and by the application fee as required by Section 13 herein, shall be submitted to the County Manager, who shall approve such application if the County Manager determines that:

- (1) The application contains no misstatement of fact;
- (2) The applicant, and any person having legal or beneficial ownership interest in the applicant, is over the age of 18 and has not been convicted of any crime involving sexual misconduct as set out in Section 7.
- (3) The applicant conforms to all requirements of applicable zoning and building codes; and
- (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 or a license to operate a massage therapy establishment revoked.

(e) Grounds for revocation of license shall include, but not be limited to, the following:

- (1) The licensee has violated any provision of this ordinance;
- (2) The licensee, or any agent of the licensee, employs or permits to be on the premises of the applicant's massage therapy establishment any person who has not been issued the privilege license required by this ordinance;
- (3) The licensee, or the legal or beneficial owner of any interest in the licensee is convicted of any crime involving sexual misconduct;
- (4) The licensee is guilty of fraudulent, false, misleading or deceptive advertising, including the use of the term "massage" to describe, promote or advertise any type of business activity or service offered which is expressly not massage therapy as defined by this ordinance, or has otherwise fraudulently engaged in the business or profession of massage therapy; or
- (5) The licensee violates any zoning, building, or fire prevention ordinance or other local, state or federal laws.

- (f) All licenses issued hereunder are nontransferable.

Section 9. DENIAL OR REVOCATION OF LICENSE.

(a) Any person denied a license pursuant to this ordinance may appeal to the Board of County Commissioners in writing stating reasons why the license should be granted. The Board may grant or deny the license. The Board may also review any determination of the granting or denial of a license on its own motion.

(b) Before the Board of Commissioners revokes a license issued pursuant to this ordinance, the Board shall cause a written notice to be sent by certified mail to the licensee affected at the address stated in the license. The notice shall advise the affected party of a right to appear before the Board of Commissioners 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 10. FACILITIES REQUIRED FOR MASSAGE THERAPY ESTABLISHMENT.

No license to conduct a massage therapy establishment shall be issued unless an inspection discloses that the establishment complies with all of the minimum requirements of the North Carolina State Building Code and all the state laws and regulations relating to health and sanitation governing health-related facilities. The County reserves the right to impose additional conditions for reasons of public health and safety.

Section 11. POSTING OF LICENSE.

(a) Every massage therapist licensed under this ordinance shall post the license required by this ordinance in his or her work area at all times.

(b) Every person, corporation, partnership, or association licensed under this ordinance as a massage therapy establishment shall display such license in a prominent place at all times.

Section 12. LOCATION.

All massage therapy or treatment shall be administered in a massage therapy establishment duly licensed under this ordinance and in a location permitted under the zoning code, except upon written recommendation by a licensed physician, osteopath, chiropractor, or registered physical therapist, such recommendation being dated and in the possession of the massage therapist giving

the massage or treatment.

Section 13. APPLICATION FEES.

- (a) The application fee for a privilege license for a massage therapist as set out in Section 7 herein shall be \$15.
- (b) The application fee for a privilege license for a massage therapy establishment as set out in Section 8 herein shall be \$25.

Section 14. ANNUAL PRIVILEGE LICENSE.

- (a) The licenses required under this ordinance are annual privilege licenses. Each license may be renewed from calendar year to calendar year by submission of a renewal application to the Office of the County Manager at least 30 days prior to the expiration date of the license. After approval of said application by the County Manager, and upon payment to the County Manager of a renewal application fee in the same amount as prescribed for initial applications, the County Manager shall issue to the applicant a renewal certificate which shall validate the applicant's license for an additional calendar year.
- (b) Revocation of a license shall not be a cause for a refund of any fee paid for issuance or renewal of a license.
- (c) It shall be unlawful to wilfully make a false statement in an application for a license or request for renewal of license under the provisions of this ordinance.

Section 15. SEPARABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 16. REPEAL OF PRIOR ORDINANCES.

"An Ordinance Licensing and Regulating Massage Businesses," enacted December 5, 1988, is hereby repealed.

Section 17. PENALTIES

Any person convicted of violating any provisions of this ordinance shall be guilty of a misdemeanor and shall be fined not more than Fifty Dollars (\$50.00) or imprisoned for not more than 30 days as provided by N.C.G.S. § 14-4. Each separate violation shall constitute a separate offense.

Section 18.

This ordinance shall become effective September 2, 1997.

Upon motion of Commissioner Frye, seconded by Commissioner Holmes, the foregoing ordinance was passed by the following vote:

Ayes: Frye, Holmes, Kemp, Mason, Davis

Noes: None

I, Alice D. Dawson, Clerk to the Randolph County Board of Commissioners, do hereby certify that the foregoing ordinance was duly adopted by the governing body of Randolph County at a regular meeting thereof, a quorum being present.

The 2nd day of September, 1997.


Clerk to the Board

**APPLICATION FOR REGULATORY LICENSE
TO OPERATE AS A MASSAGE THERAPIST
IN RANDOLPH COUNTY**

The undersigned, being duly sworn according to law, says and deposes that the following facts are true and correct:

1. **Background Information**

Name: _____

Residence Address: _____

Home Phone: _____ Date of Birth: _____ Age: _____

Place of Birth: _____ Name of Parents: _____

2. **Previous Business or Occupation**

During the two years immediately preceding the date of this application, I have engaged in the following occupations, jobs, professions, or employments:
(Give name and address of business and position held for each job listed.)

3. **Prior Criminal Convictions**

I have never been convicted of or entered a plea of guilty or no contest to any criminal prosecution (including felony, misdemeanor or violation of local ordinance) except as follows:

(If none, insert "None" above)

4. **Prior License Revocation**

I have never had a license issued to me to engage in the business or profession of massage revoked except as follows:

(If none, insert "None" above)

5. My residence addresses during the past three years are:

6. Business Location

Massage business where I will be employed:

7. The applicant shall submit, as part of this application, the following:

1. Proof of training consisting of either:
 - (a) A diploma or certificate of graduation from an institute or school of massage whose curriculum is approved by the American Massage Therapy Association; or
 - (b) A diploma, transcript, or certificate of completion from a school or other institution of learning, or a workshop/seminar leader, which indicates the subjects studied and the number of hours of hands-on experience and classroom hours taken.
2. Two written notarized recommendations from two members in good standing with the American Massage Therapy Association or from two persons or instructors from other schools or institutions of learning, attesting to the qualifications and good standing of the applicant

The additional information required by this subsection shall be provided at the applicant's expense.

Applicant's Signature

Sworn and subscribed before me this _____ day of _____, 19____.
My Commission expires: _____

Notary Public

APPROVED BY RANDOLPH COUNTY

BY: _____

DATE: _____

APPLICATION FOR REGULATORY LICENSE
TO OPERATE A MASSAGE BUSINESS
IN RANDOLPH COUNTY

The undersigned, being duly sworn according to law, says and deposes that the following facts are true and correct:

1. Name and Address of Business

Name: _____
Address: _____
Phone Number: _____

2. Name and Address of Owners

(a) Name: _____
Address: _____
Date of Birth: _____ Place of Birth: _____
Phone Number: Home _____ Business _____

(b) Name: _____
Address: _____
Date of Birth: _____ Place of Birth: _____
Phone Number: Home _____ Business _____

(NOTE: If applicant is a corporation, partnership, or association, attach a statement listing the name and residence address of all persons having any legal or beneficial interest in applicant organization.)

3. Statement of Convictions for any Felony or Prostitution

The applicant, or any of the persons having any legal or beneficial interest in the partnership, corporation, or association applicant, has not been convicted or entered a plea of guilty or no contest in any court on charges of a felonious criminal offense or of any criminal offense of prostitution or any law relating to prostitution except as follows:

(NOTE: Write "None" if never so convicted)

4. Statement of Revocations of License to Operate Massage Business

The applicant, or any of the persons having any legal or beneficial interest in the partnership, corporation, or association applicant, has never had revoked by any government unit any license to operate a massage business or to engage in the business or profession of massage except as follows:

(NOTE: If None, insert "None" Above)

5. Statement of Any Conviction For Violation of Any Law, Ordinance, or Regulation Concerning Operation of Massage Business or the Business or Profession of Massage

The applicant, or any of the persons having any legal or beneficial interest in the partnership, corporation, or association applicant, has never been convicted of or entered a plea of guilty or no contest in a criminal prosecution for violation of any statute, law, ordinance or regulation of any government concerning the operation of a massage business or concerning the business or profession of massage except as follows: _____

(NOTE: If None, insert "None" Above)

6. Other Massage Business(es) Owned

The applicant, or any persons having any legal or beneficial interest in the partnership, corporation, or association applicant, owns or operates the following massage businesses or establishments wherein the business or profession of massage is carried on in addition to the applied for massage business:

Name: _____ Phone # _____

Address: _____

(NOTE: If None, insert "None" Above)

7. Other Businesses on Premises

Applicant owns or operates the following other businesses or enterprises on the premises described in Section 2 hereof, or upon adjoining premises owned or controlled by the applicant: _____

(NOTE: If None, insert "None" Above)

Applicant's Signature

APPROVED BY RANDOLPH COUNTY

SWORN TO AND SUBSCRIBED BEFORE ME
THIS ____ DAY OF _____, 19____.

BY: _____

DATE: _____

Notary Public