

ORDINANCE AMENDING CHAPTER 34 OF THE CITY CODE TO CREATE A
NEW ARTICLE IV ENTITLED "MASSAGE AND BODYWORK THERAPY" TO
REGULATE THE OPERATION OF MASSAGE AND BODYWORK THERAPY
ESTABLISHMENTS WITHIN THE CITY

BE IT ORDAINED, by the Mayor and Winston-Salem City Council as follows:

Section 1. Article IV of Chapter 34 is hereby created to read as follows:

"ARTICLE IV. MASSAGE AND BODYWORK THERAPY

Sec. 34-23. Purpose.

The City of Winston-Salem recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. To protect public health, safety, welfare, and morals, the provisions and regulations of this chapter are ordained for the privilege of carrying on the businesses, trades, or professions wherein massage or other physical manipulation of the human body is carried on or practiced.

Sec. 34-24. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings:

- (a) Board. The North Carolina Board of Massage and Bodywork Therapy.
- (b) Massage and bodywork therapist or massagist. A person engaged in the practice of massage and bodywork therapy services as described below.
- (c) Massage and bodywork therapy. Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include, but is not limited to:
 - (1) Pressure, friction, stroking rocking, kneading, perfusion, or passive or active stretching within the normal anatomical range of movement.
 - (2) Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.
 - (3) The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

This definition shall include by reference the definition of massage and bodywork therapy as defined in G.S. § 90-622, as may be amended from time to time.

- (d) Massage and bodywork therapy business. A business engaged in providing massage and bodywork therapy services as described above.

- (e) Permittee. A massage and bodywork therapist or massagist or a massage and bodywork therapy business that has received a current state massage and bodywork therapy license from the State and a business permit for massage or the same from the City of Winston-Salem.
- (f) Practice of massage and bodywork therapy. The application of massage and bodywork therapy to any person for a fee or other consideration. "Practice of massage and bodywork therapy" does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

Sec. 34-25. Prohibitions.

A person shall not:

- (a) Employ, contract with, or hire a person to carry on the practice of massage and bodywork therapy unless such employee, person contracted with, or person hired has a current state massage and bodywork therapy license issued pursuant to Article 36 of Chapter 90 of the North Carolina General Statutes.
- (b) Lease, rent, or otherwise knowingly allow the use of any premises by any person for the purpose of carrying on the profession or business of massage and bodywork therapy unless such lessee, renter, or user is in possession of a current state massage and bodywork license issued pursuant to Article 36 of Chapter 90 of the North Carolina General Statutes.
- (c) Employ any person under the age of eighteen (18) years in the operation of a massage and bodywork therapy business.
- (d) Open a massage and bodywork therapy business without having first been licensed by the Board pursuant to G.S. ch. 90, art. 36, unless otherwise exempt from the Board licensure process.
- (e) Operate or advertise a massage and bodywork therapy business without having a current state massage and bodywork therapy license issued by the Board pursuant to G.S. ch. 90, art. 36, unless otherwise exempt from the Board licensure process.
- (f) Insomuch as the permittee is a massage and bodywork therapy business, fail to notify the Winston-Salem Police Department in writing of any material changes in ownership, business name, or services provided, within fourteen (14) business days.
- (g) Solicit to offer, advertise, or promote services that are a violation of this article or in violation of state or local laws.

Sec. 34-26. Business Permit Requirements.

- (a) Any massage and bodywork therapist or massagist or massage and bodywork therapy business shall have a current state massage and bodywork therapy license issued pursuant to G.S. ch. 90, art. 36, unless otherwise exempt from the Board licensure process.
- (b) Any massage and bodywork therapist or massagist who has a current state massage and bodywork therapy license issued pursuant to G.S. ch. 90, art. 36, is exempt from a city business permit.
- (c) Any business, corporation, LLC, LLP, partnership, or individual who hires employees or independent contractors and is not otherwise exempt from licensure that employs, contracts with, or hires others to perform massage and bodywork therapy, shall obtain a city business permit.
- (d) Any person or entity applying for a business permit for a massage and bodywork therapy business prescribed herein shall be upon a form approved by the city manager and shall be filed with the city manager or his designee. Any person or entity applying for a business permit for a massage and bodywork therapy business shall also be required to submit with the permit application their North Carolina Employer ID number and a list including the name, address, home telephone numbers and North Carolina driver's license number or picture ID issued by the North Carolina DMV of each and every employee, contract worker, or hiree who is to perform massage and bodywork therapy pursuant to a license issued to each such employee, contract worker, or hiree pursuant to G.S. ch. 90, art. 36, and further that the business permittee shall immediately within fourteen (14) days notify the city manager or his designee of the City of Winston-Salem if and when such state license expires and is not immediately renewed, or is revoked, suspended, or otherwise terminated; further and in the case of permit renewals, the applicant shall annually provide a list of all employees, contract workers and hires who provided massage therapy on the business premises in the ninety (90) days immediately preceding the date of the application. Every such application shall be affirmed by an affidavit signed by the applicant and shall contain the information:
 - (1) If the applicant is an individual, name, residence address, and Social Security Number of such person. If the applicant is a business, corporation, LLC, LLP, or partnership, the name, residence address, and Social Security Number of all persons having any legal or beneficial interest in such applicant;
 - (2) The address of the premises where the massage and bodywork therapy business shall be located. Nothing in this subsection shall prevent a massage and bodywork therapist or massagist employed by a permitted massage and bodywork therapy business from performing massages on behalf of that

business at locations removed from the physical premises where the massage and bodywork therapy business is permitted;

- (3) A complete statement of all convictions of any person whose name(s) is (are) required to be given in paragraph (d)(1) above, of any crime involving sexual misconduct, including, but not limited to, G.S. §§14-203 through 14-208 (Article 27, Prostitution), 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 therapy;
 - (4) A complete statement of any revocation, by any governmental unit, of any license or permit to operate a massage and bodywork therapy business or to engage in the business or profession of massage held by any person(s) whose name(s) is (are) required to be given in paragraph (d)(1) above;
 - (5) A complete statement of any conviction or findings of any person whose name(s) is (are) required to be given in paragraph (d)(1) above, for any violation of any statute, law, ordinance, or regulation of any government concerning the operation of a massage and bodywork therapy business or the business or profession of massage; and
 - (6) The name and address of any massage and bodywork therapy business of other establishment owned or operated by any person(s) whose name(s) is (are) required to be given in paragraph (d)(1) or profession of massage is carried on within the State of North Carolina;
 - (7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant;
- (e) The city manager or his designee shall transmit a copy of the application to the Winston-Salem Police Department for an investigative report; to planning department or other appropriate department 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 planning department shall, within a reasonable time, not to exceed thirty (30) days unless there are extenuating circumstances, report the results of their examinations to the city manager or his designee.
- (f) During the course of the business permit year, which shall date from July 1 of each and every year and shall expire on June 30 of each year, and upon the written request of the city manager or his designee, permittee will provide a complete and accurate update of the list required in, and by, paragraphs (d) and (e) above, including all (d) information. Such

update shall be received in the office of the city manager or his designee within fourteen (14) calendar days after permittee receives the written request for same.

(g) The application shall be approved if the city manager, or his designee, determines that:

- (1) The application contains no misstatement of fact;
- (2) All persons employed as massage and bodywork therapists or massagists or who will perform massage and bodywork therapy hold a valid license to practice massage and bodywork therapy issued by the State of North Carolina;
- (3) The massage and bodywork therapy business holds a valid massage and bodywork therapy establishment license issued by the Board;
- (4) The applicant, or any person having any legal or beneficial ownership interest in the applicant is over the age of eighteen (18) years and has not been convicted of any crime involving sexual misconduct, including, but not limited to, G.S. §§14-177 through 14-202.1 (Article 26, Offenses Against Public Morality and Decency) and G.S. §§14-203 through G.S. 14-208 (Article 27, Prostitution), 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 therapy within the previous ten (10) years;
- (5) The proposed establishment conforms to all requirements of applicable zoning, building, and fire prevention codes; and
- (6) 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 or permit for engaging in the business or profession of massage and bodywork therapy revoked by the Board.

(h) Posting of license. Any massage or bodywork therapist or massagist shall post the North Carolina State Massage and Bodywork Therapy license required by this article in his or her work area in a prominent place. All North Carolina state massage and bodywork therapy licenses, whether issued for an individual massage and bodywork therapist or massagist or to a massage and bodywork therapy business, shall be displayed inside the establishment and within view of the public in a prominent place.

(i) Hours of operation. No business, corporation, LLC, LLP, partnership, or individual permitted under this article shall admit customers or prospective customers, or remain open for business, or allow, permit, or condone any massage or bodywork therapy of any person upon the premises between the hours of 11:30 p.m. and 5:00 a.m.

- (j) No business, corporation, LLC, LLP, partnership or individual not permitted or exempted under this chapter shall engage in any of the following:
- (1) Practicing massage and bodywork therapy;
 - (2) Advertising, representing, or holding oneself out to others as a massage and bodywork therapist or a massage and bodywork therapy business; or
 - (3) Using any title descriptive of any branch of massage and bodywork therapy to describe one's practice.
- (k) Exemption. Any person exempted from the requirement of a North Carolina massage and bodywork therapy license under G.S. §90-622 as amended is exempt from this section.

Sec. 34-27. Enforcement.

- (a) A permittee shall be issued a notice of violation if any of the following is determined:
- (1) That the permittee has violated any requirement or prohibition of this article.
 - (2) That the permittee, so long as the permittee is a massage and bodywork therapy business, materially changed ownership, business name, or the service provided without notifying the Winston-Salem Police Department) in writing within (5 business days of such change);
 - (3) That the permittee, or any agent of the permittee, employs or permits to be on the premises of the applicant's massage and bodywork therapy business any person practicing the business or profession of massage and bodywork therapy who has not been licensed by the State of North Carolina or who has not been issued the regulatory permit required by this article or whose license or permit under this article or under North Carolina General Statutes has been revoked or is currently suspended;
 - (4) That the permittee violates any zoning, building, or fire prevention ordinance, or if exempted from building or fire prevention inspections, performs massage to a client or for a fee within the home or allows the public to enter the home in connection with the massage and bodywork therapy business; or
 - (5) That the permittee or any current employee of the permittee is convicted of any felony in connection with his or her employment, or is convicted of any crime involving sexual misconduct, or is convicted or held responsible for any other governmental units' regulations of massage and bodywork therapy.

- (b) Upon the second notice of violation within a twelve-month rolling period, the business permit pursuant to this chapter shall be revoked. Permit revocation shall precipitate and require closure of the business.
- (c) Any permittee permitted under this chapter found in operation after revocation of permit shall be subject to a civil penalty of one hundred dollars (\$100.00) each day said licensee operates in violation of this chapter. Permit revocation or operation without a permit shall precipitate and require closure of the business and further require that no similar use be made of the property for six (6) months thereafter. All civil penalties levied under this Article are due within thirty (30) days of notice of the violation and civil penalty.
- (d) The civil penalties provided in this article are remedies enforceable by a civil action in the nature of a debt. No violation of this article shall constitute a misdemeanor as provided in G.S. § 14-4.”

Section 2. This ordinance shall become effective upon adoption.