

## WARRENTON ZONING ORDINANCE

### Massage Therapy Businesses Text Amendment

Adopted by Town Council July 8, 2014

#### Article 9-23. Massage Therapy, Establishment of Provisions for Therapists and Businesses

##### 9-23.1 General Provisions

The following words and phrases, when used in this Chapter shall, for the purpose of this Chapter, have the meanings set forth below except in those instances where the context clearly indicates a different meaning:

*Client* means any person receiving a massage from a massage therapist who has been compensated for administering the massage.

*Disqualifying offenses* means offenses which disqualify an applicant from obtaining a permit pursuant to this Chapter or, if the offender already holds a permit, which mandate revocation of the permit. Disqualifying offenses are:

9-23.1.1 Conviction, plea of nolo contendere or a forfeiture on a charge of violating any provision of §§ 18.2-346, 18.2-347 through 18.2-349, 18.2-355 through 18.2-358, 18.2-361, 18.2-368, 18.2-370, 18.2-370.1, 18.2-371, 18.2-386.1 or 18.2-387 of the Code of Virginia, which laws relate to sexual offenses, or any provision of an ordinance of the Town or a law or ordinance of another jurisdiction which prohibits the same conduct, within the past ten (10) years.

9-23.1.2 Conviction, plea of nolo contendere or a forfeiture on a charge of violating any provision of this Chapter, or on a charge of violating a similar law in any other jurisdiction, within the past five (5) years.

9-23.1.3 Making a false statement on a permit application.

9-23.1.4 *Erogenous areas* means the genitals and the nipples and areolae.

*Massage* means the treatment, for compensation, of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the

manipulation or application of pressure to the muscular structure or soft tissues of the human body.

*Massage establishment* means any fixed place of business where a massage is administered to a client.

*Massage therapist* means any individual certified as a massage therapist by the Board of Nursing of the Commonwealth of Virginia.

*Out-call massage* means any massage administered for compensation at a location other than at a massage establishment.

*Town* means the town of Warrenton government.

### **9-23.1.1 Exclusions -**

The provisions of this Chapter do not apply to the following massages, and such massages are expressly excluded from the requirements of this Chapter:

- (a) A massage administered only to the scalp, face, neck, shoulders, arms, hands, and/or the feet.
- (b) A massage of the upper body while the client is fully clothed and seated in a chair.
- (c) A massage administered in a hospital or medical clinic or in the office of a physician, chiropractor, osteopath or physical therapist licensed by the Commonwealth of Virginia.
- (d) A massage administered in a nursing home, convalescent care facility, assisted living facility, progressive care facility or life care facility.
- (e) A massage administered by a physician, chiropractor, osteopath, physical therapist or nurse, licensed by the Commonwealth of Virginia, in any location.
- (f) A massage administered at an organized public event, such as a health fair or sporting event, which is open for participation or viewing by the general public.
- (g) A massage administered at a school which offers a massage therapy program that has received programmatic approval from the Virginia Board of Education, Office of Proprietary Schools, or that has been certified or approved

by the Virginia Board of Education, Office of Proprietary Schools or the Virginia State Council of Higher Education; provided, however, that this exclusion applies only if the individual administering the massage is a student enrolled at the school and receives no compensation for doing so.

## **9-23.2: Massage Therapist Permit**

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### **9-23.2.1 Permit required -**

- (a) It is unlawful for any person, operator or manager of any massage parlor establishment to offer or administer a massage in Town of Warrenton unless he or she has a valid massage therapist permit issued by the town.
- (b) It is unlawful for the owner, operator or manager of any massage establishment to allow any person who does not have the permit required by this section to administer any massage in the establishment.
- (c) The Town of Warrenton shall not issue a massage therapist permit to any person, operator or manager of any massage parlor establishment who is not certified by the Board of Nursing of the Commonwealth of Virginia as a massage therapist.

### **9-23.2.2 Permit application, duty to update -**

Each application for a massage therapist permit shall be upon a form prepared by the town. The applicant shall provide full answers to all questions on the application under oath. The completed application shall contain the following information, as well as other information which the town deems necessary to properly evaluate the application:

- (a) The applicant's full name, names by which the applicant previously was known, date and place of birth, and current residential and business addresses and telephone numbers.
- (b) A copy of the applicant's massage therapist certification from the Board of Nursing of the Commonwealth of Virginia.
- (c) The applicant's personal characteristics, such as height, weight, eye color, hair color, sex and race.

- (d) The names and addresses of all massage establishments where the applicant has been employed as a massage therapist within the past three years.
- (e) Whether the applicant currently holds or previously held a permit or license to offer or administer massages anywhere in Virginia or in any other state. If the applicant holds or has held any such permit or license, the applicant shall provide the license or permit number and the identity of the issuing authority, and whether such permit or license has ever been revoked or suspended and the reason therefore.
- (f) The applicant's criminal record, if any, other than misdemeanor traffic violations or traffic infractions, a complete set of the applicant's fingerprints which shall be taken, a consent form allowing the Warrenton Police Department to obtain a search of the Central Criminal Records Exchange, and an investigation fee in the amount established by the Virginia State Police for conducting the records search.
- (g) Three full-face and one profile photograph.
- (h) The application fee of \$50. The fee is in addition to any business or occupation license tax imposed by the town and any other taxes or fees which may be required to engage in the business. During the term of the permit, each person to whom a massage therapist permit is issued under this Section must report to the town any change in status.

**9-23.2.3 Issuance or denial -**

- (a) The Zoning Administrator shall act upon the application for a massage therapist permit within thirty days (30) days from the date the Town receives the application.
- (b) If the Zoning Administrator determines from the information contained in the permit application and from the Warrenton Police Department's investigation that the applicant has committed no disqualifying offenses and that the applicant is otherwise qualified under this Chapter to administer massage therapy in the town, the Zoning Administrator shall issue the permit. Each permit issued by the town shall be the property of the town of Warrenton and it shall be returned to the town in the event the permit is suspended or revoked. The permit must be returned within 7 days.

- (c) If the town determines from the information contained in the permit application and from the Warrenton Police Department's investigation that the applicant has committed one or more disqualifying offenses or is otherwise unqualified under this Chapter to administer massage therapy in the town, the Zoning Administrator shall deny the application.
- (d) If an application is denied, the Zoning Administrator shall provide the applicant with written notice setting forth the grounds for the denial. Any appeal shall be filed by the applicant within thirty (30) days after the applicant receives the notice and shall specify the grounds for appeal. An appeal hearing shall be held within sixty (60) days after the appeal is filed.

**9-23.2.4 Term -**

A massage therapist permit shall be valid for one (1) year from the date of issuance, unless sooner suspended or revoked. Within thirty (30) days before the expiration date, a permitted massage therapist may apply for a new permit.

**9-23.2.5 Validity of permit dependent upon validity of state certification -**

The validity of a massage therapist permit issued under this Chapter is dependent upon the validity of the state certification as a massage therapist. Suspension of a massage therapist's certification by the Commonwealth of Virginia shall result in the automatic suspension of the permit issued under this article. Revocation of a massage therapist's certification by the Commonwealth of Virginia shall result in the automatic revocation of the permit issued under this article. Automatic suspensions and revocations are not subject to the appeal procedures established in § 28.1-5-3.

**9-23.2.6 Not transferable -**

Massage therapist permits are not transferable.

**9-23.2.7 Permit display -**

Every person to whom a massage therapist permit has been granted shall display the permit while in a massage establishment.

### 9-23.3: Massage Establishment Permit

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#### 9-23.3.1 Permit required -

It is unlawful for any person to own or operate a massage establishment in the Town of Warrenton unless he or she has a valid massage establishment permit issued by the town.

#### 9-23.3.2 Permit application, duty to update -

Each application for a massage establishment permit shall be upon a form prepared by the town. The applicant shall provide full answers to all questions on the application under oath. The completed application shall contain the following information, as well as other information, which the Zoning Administrator deems necessary to properly evaluate the application:

- (a) *Full application process.*
  - (1) A description of the facilities and services to be available on the premises of the proposed establishment.
  - (2) The location and mailing address of the establishment.
  - (3) The name under which the establishment will operate.
  - (4) The applicant's full name, names by which the applicant previously was known, date and place of birth, incorporation or organization, and current residential and business addresses and telephone numbers, as applicable. If the applicant is a privately-held corporation or company, it must supply the information for the corporation or company, each officer and each director. If the applicant is a publicly-held corporation, it must supply the information for the corporation and for the officer or agent who will have responsibility for the daily operations of the establishment. If the applicant is a partnership, it must supply the information for the partnership and for each partner.
  - (5) Whether the applicant currently holds or previously held a permit or license to operate a massage establishment or to administer massages anywhere in Virginia or any other state. If the answer is affirmative, the license or permit number, the identity of the issuing authority and whether such permit or license has ever been revoked or suspended and the reason therefor. If the applicant is a

privately-held corporation or company, it must supply the information for the corporation or company, each officer and each director. If the applicant is a publicly-held corporation, it must supply the information for the corporation and for the officer or agent who will have responsibility for the daily operations of the establishment. If the applicant is a partnership, it must supply the information for the partnership and for each partner.

- (6) The criminal record, if any, other than misdemeanor traffic violations or traffic infractions, of the applicant and a consent form allowing the Warrenton Police Department to obtain a search of the Central Criminal Records Exchange. If the applicant is a privately-held corporation or company, it must supply the information for each officer and each director. If the applicant is a publicly-held corporation, it must supply the information for the officer or agent who will have responsibility for the daily operations of the establishment. If the applicant is a partnership, it must supply the information for each partner. Each application shall be accompanied by an investigation fee in an amount equal to the fee established by the Virginia State Police for conducting a records search multiplied by the number of persons making disclosures and providing consent forms.
  - (7) The name of the operator or manager of the massage establishment. If the operator or manager of the massage establishment is not an applicant, then the operator or manager must provide the information required in this section relative to the applicant.
  - (8) The application fee of \$75.00. This fee is in addition to any business or occupation license tax imposed by the Town, and any other taxes or fees which may be required to engage in the business.
- (b) *Streamlined application process* - If any individual required by Subsection (a) to disclose information holds a massage therapist permit issued under this Chapter, that individual may supply, in lieu of the information required by Subsections (a)(4), (a)(5) and (a)(6), his or her name and permit number and either a statement that no changes have occurred since he or she completed the application for the massage therapist permit or a list of any such changes.

- (c) During the term of the permit, the applicant must report to the Zoning Administrator any change in the information required in the permit application within twenty-one (21) days of learning of the change.

**9-23.3.3 Issuance or denial -**

- (a) The Zoning Administrator shall act upon the application for a massage establishment permit within sixty (60) days from the date the town of Warrenton receives the application.
- (b) If the Zoning Administrator determines from the information contained in the permit application and from the Warrenton Police Department's investigation that the proposed establishment will meet the requirements of this Chapter, that neither the applicant, nor any officers or directors thereof, or its operator or manager, have committed any disqualifying offenses and are otherwise qualified under this Chapter to engage in such business in the Town, the Zoning Administrator shall issue the permit. Each permit issued by the Zoning Administrator shall be the property of the Town of Warrenton and shall be returned to the town in the event it is suspended or revoked. Permits must be returned within 7 days.
- (c) If the Zoning Administrator determines from the information contained in the permit application and from the Zoning Administrator's investigation that the proposed establishment will not meet the requirements of this Chapter, or that the applicant, an officer or director thereof, or an operator or manager have committed one or more disqualifying offenses or are otherwise unqualified under this Chapter to engage in such business in the Town, the Zoning Administrator shall deny the application.
- (d) If an application is denied, the town shall provide the applicant with written notice setting forth the grounds for the denial. Any appeal shall be filed by the applicant within thirty (30) days after an applicant receives the notice and shall specify the grounds for appeal.

**9-23.3.4 Term -**

A massage establishment permit shall be valid for one (1) year from the date of issuance, unless sooner suspended or revoked. Within sixty-five (65) days before the expiration date, a permitted massage establishment may apply for a new permit.

### **9-23.3.5 Permit transfer or change of location -**

- (a) Massage establishment permits are not transferable from one (1) person to another, whether by sale, lease, merger or otherwise.
- (b) If a privately-held corporation or company or a partnership holds a massage establishment permit issued under this Chapter, the transfer of more than ten percent (10%) of the ownership of the corporation, company or partnership to a person or entity who was not an owner when the application was made shall cause the automatic expiration of the permit. The expiration shall occur on the date of the transfer.
- (c) A change of location of a massage establishment may be approved by the Director and the establishment's permit transferred to the new location, provided the establishment continues to comply with all applicable provisions of this Code.

### **9-23.3.6 Permit display -**

Every person to whom a massage establishment permit is issued shall display the permit in a conspicuous place in the massage establishment, so that it may be readily seen by persons entering the premises.

## **9-23.4: Minimum Standards**

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### **9-23.4.1 Compliance with Zoning Ordinance -**

Massage establishments shall be located in a proper zoning district, as specified in the Town of Warrenton Zoning Ordinances.

### **9-23.4.2 Requirements for massage establishments -**

- (a) All massage establishments shall comply with all applicable provisions of the Virginia Uniform Statewide Building Code, including those provisions relating to lighting, ventilation, toilet facilities and accessibility.
- (b) Non-disposable tools of the trade shall be disinfected after use upon one client.
- (c) Walls, ceilings, floors, bathrooms, and all other physical facilities for the establishment shall be kept in good repair and maintained in a sanitary condition.

- (d) All towels and tissue, all sheets or other coverings shall be used singularly for each client and discarded for laundry or disposal immediately after use.

**9-23.4.3 Cleanliness of therapists -**

Every massage therapist shall cleanse his or her hands thoroughly with soap and hot running water immediately before administering each massage.

**9-23.4.4 Massaging clients with skin inflammation or eruptions prohibited -**

No massage therapist may knowingly massage any client infected with any fungus or other skin infections, nor shall service be performed on any client exhibiting skin inflammation or eruptions, unless a licensed physician certifies that a client may be safely served.

**9-23.4.5 Massaging clients while therapist ill prohibited -**

No massage therapist may massage any client when the massage therapist is suffering from any communicable disease transmitted by skin-to-skin contact or through the secretions of the respiratory tract, including, but not limited to, infectious tuberculosis, measles, meningococcal disease, mumps, chicken pox and Hemophilus Influenzae Type b, or from any skin lesions or disease on the hands or arms, or any nasal or ear discharge or inflamed eyes.

**9-23.4.6 Massaging, touching, exposing erogenous areas -**

- (a) It is unlawful for any person, in a massage establishment or during the course of an out-call massage transaction, to touch, with any part of his or her body or with any object, another person's clothed or unclothed erogenous area.
- (b) It is unlawful for any person, in a massage establishment or during the course of an out-call massage transaction, to fail to conceal his or her erogenous areas with a fully opaque covering while in the presence of others.
- (c) It is unlawful for any person owning, operating or managing a massage establishment or out-call massage business to knowingly cause or allow, in or about such massage establishment or as part of an out-call massage business, any agent, employee or any other person under his control or supervision to perform any act prohibited by this section.

**9-23.4.7 Restrictions on out-call massage -**

Out-call massage may be administered only in the residence of the client. "Residence" means one (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used or intended for use as a complete, independent living facility which

includes permanent provisions for living, sleeping, eating, cooking and sanitation. "Residence" shall not include a motel, hotel, or other accommodation used for transient occupancy.

### **9-23.5 Penalties and Enforcement -**

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#### **9-23.5.1 Violations of Chapter -**

Any person violating any provision of this Chapter shall be guilty of a Class 1 misdemeanor.

#### **9-23.5.2 Right of entry to enforce Chapter -**

The Planning Director, the chief of police, the zoning administrator and the building official, or their duly authorized agents, are hereby authorized to enter, examine and survey, during business hours, any premises in the town of Warrenton for which a massage establishment permit has been issued pursuant to this Chapter for the purpose of inspection and to enforce the provisions of this Chapter. The town shall inspect each massage establishment at least one (1) time per year to determine whether it is being operated in compliance with this Chapter. This section shall not restrict or limit the right of entry vested in any law enforcement agency.

#### **9-23.5.3 Revocation or suspension of permits -**

- (a) Grounds for revocation of any permit granted under this Chapter exist if the permittee, operator or manager has committed any disqualifying offense or repeatedly has had a permit issued under this Chapter suspended. If the permittee is a privately-held corporation or company, grounds for revocation exist in the event of such conduct by the corporation or company or by any officer or director. If the permittee is a publicly-held corporation, grounds for revocation exist in the event of such conduct by the corporation or by any officer or agent who has responsibility for the daily operations of the establishment. If the permittee is a partnership, grounds for revocation exist in the event of such conduct by the partnership or any partner. If the town believes that grounds for revocation of a permit exist, the town shall give the permittee written notice enumerating the grounds and declaring the town's intent to hold a hearing at a specified date and time to determine whether revocation is warranted. The notice shall be mailed, by certified mail, to the permittee's last known address, at least ten (10) days prior to the date set for the hearing. At the hearing, the permittee may be represented by counsel, may cross-examine witnesses and may present evidence in his favor. If the town finds that any ground for revocation in fact exists, the Zoning Administrator shall revoke the permit. The town shall issue a written notice of his findings and decision within ten (10) work days of the hearing. Any appeal shall be filed by the permittee within thirty (30) days after a permittee receives the

notice and shall specify the grounds for appeal. The Zoning Administrator's action remains in effect during the pendency of the appeal. The Town of Warrenton Board of Zoning Appeals shall hold an appeal hearing no later than sixty (60) days after the appeal is filed.

- (b) Grounds for suspension of any permit granted under this Chapter exist if the permittee has failed to comply with any provisions of this Chapter other than those which mandate revocation. If the permittee is a privately-held corporation or company, grounds for suspension exist in the event of such failure to comply by the corporation or company or by any officer or director. If the permittee is a publicly-held corporation, grounds for suspension exist in the event of such failure to comply by the corporation or by any officer or agent who has responsibility for the daily operations of the establishment. If the permittee is a partnership, grounds for suspension exist in the event of such failure to comply by the partnership or any partner. The Zoning Administrator or any person with a right of entry under § 28.1-5-2 may order the suspension of the permit with or without notice. The order shall set forth the reasons for the suspension. A copy of the suspension order shall be hand delivered or mailed by certified mail to the permittee's last known address. The Zoning Administrator may end a suspension at any time if the reason for the suspension is corrected. Any appeal shall be filed by the permittee within thirty (30) days after a permittee receives the suspension order and shall specify the grounds for appeal.