

PROPOSED ORDINANCE

Proposed by: Town Attorney

A proposed ordinance to amend Chapter 22, Massage Salons, Health Clubs, Etc., Sections 22-1 through 22-13, amending and adopting new provisions to Chapter 22 as indicated, of the Code of the Town of Vienna.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

Section 1: The Town Code, Chapter 22, Massage Salons, Health Clubs, Etc., Sections 22-1 through 22-13, is amended to include amended and new provisions to Chapter 22 of the Code of the Town of Vienna, and to read as follows:

Chapter 22 MASSAGE SALONS, MASSAGE PARLORS~~HEALTH CLUBS~~, MASSAGE THERAPY ESTABLISHMENTS AND SERVICES, ETC.

Sec. 22-1. 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:

Certified massage therapist means a person who meets the qualifications specified in Code of Virginia, § 54.1-3029, and who is currently certified by the board of nursing of the commonwealth.

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

Director means the Director of [REDACTED] unless otherwise stated.

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:

- (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 County or a law or ordinance of another jurisdiction which prohibits the same conduct, within the past ten (10) years.
- (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.
- (3) Making a false statement on a permit application.

Commented [BS1]: The Town Manager needs to designate a department to do the monitoring and to bring formal complaints to the Police Department when it becomes a possible criminal violation

Erogenous areas means the genitals and the nipples and areolae.

~~Health club~~ Message Salons, Massage Parlors, Massage Therapy Establishments and Services, etc., means any fixed place of business where a massage is administered to a client, unless the place is excluded from regulation by §22.1.1 as well as means 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 term "health club" does not include:

Commented [BS2]: "Health Club" definition may not be necessary given the new definitions, ie. massage establishment

- (1) Hospitals, nursing homes, medical clinics or the offices or quarters of a physician, surgeon, or an osteopath;
- (2) ~~Exercise clubs exclusively for members or clientele of one sex alone where the services, without massage in any form, are performed by persons of the same sex as the members or clientele;~~
- (23) Barbershops and beauty parlors; or
- (4) ~~The offices of a massage therapist who has completed a massage training program at an approved school and made appropriate application as defined in sections 22-5, 22-6, and 22-7.~~

Massage means a manual manipulation of the human body, and including holding, positioning, causing movement, and applying touch and pressure to the body as well as 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, unless the massage is excluded from regulation by §22-1.1.

Massage therapy means the treatment 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 tissue of the human body. The terms "massage therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

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

Masseur and masseuse mean 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. The terms "masseur" and "masseuse" do not include massage therapists as defined herein, physical therapists or occupational therapists duly licensed by the Board of Nursing medicine of the Commonwealth of Virginia.

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

(Code 1969, § 22-1; Ord. of 12-1-1975; Ord. of 11-8-1994; Ord. of 10-28-1996)

Sec. 22-1.1. 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.

Sec. 22-2. Authority for chapter; purpose of chapter.

The ordinance from which this chapter is derived is enacted pursuant to the provisions of section 2.1 of the Town Charter for the purpose of securing and promoting the health, safety and general welfare of the people of the Town.

(Code 1969, § 22-2; Ord. of 12-1-1975)

Sec. 22-3. Policy.

It is hereby declared that the business of operating massage salons, massage parlors, health clubs, and massage therapy establishments are businesses affecting the public health, safety and general welfare.

(Code 1969, § 22-3; Ord. of 12-1-1975)

Sec. 22-4. Operating Permit and Massage/Message Therapist License required.

It shall be unlawful for any person to operate or engage in the business of operating any massage salon, ~~or massage parlor, health club, and massage therapy establishment~~ within the Town without first having obtained a permit for the operation and a Town issued license for each

individual masseur, masseuse or massage therapist and complying with all the provisions of this chapter.

(Code 1969, § 22-4; Ord. of 12-1-1975)

Sec. 22-5. Application for permit for operation of a massage salon, massage parlor, and massage therapy establishment.

Applicants for an operating permit to operate a massage salon, massage parlor and/or massage therapy establishment and license under this chapter shall file with the Town Manager an application in writing, under oath, and in duplicate on a form to be furnished by the Town Manager, establishing the following:

1. Name and description of the applicant, including any corporate affiliation, and proof that applicant is 21 years of age or more.
2. Applicant's permanent home address and full local address.
3. Health certificates from a licensed medical doctor of the commonwealth.
4. The information provided in subsections 1, 2 and 3 of this section with respect to all proposed employees of applicant and all future employees.
5. A copy of the applicant's massage therapist certification from the Board of Nursing of the Commonwealth of Virginia when applicable.
6. A complete and detailed description of the facilities for the proposed massage salon, ~~or~~ massage parlor, health club, or massage therapy establishment.
7. The qualifications and training of the applicant and a list of all proposed employees as masseurs, ~~and~~ masseuses and massage therapists.
8. The applicant must provide the applicant's personal characteristics, such as height, weight, eye color, hair color, sex and race.
9. The names and addresses of all massage establishments where the applicant has been an owner or employee or employed as a masseur, masseuse, or massage therapist within the past three years.
10. Whether the applicant currently holds or previously held a permit or license to operate a massage salon, massage parlor and/or massage therapy establishment 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 therefor.
11. 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 as directed by the Director, a consent form allowing the Director 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.

Commented [SDB3]: List of employees

12. Three full-face and one profile photograph, in a size designated by the Director.

13. The application fee of \$500 for an establishment operating permit and/or the application fee of \$150 for each employee employed as a masseur, masseuse, or massage therapist in the establishment. 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 and/or license, each person to whom a massage/massage therapist permit or license is issued under this Section must report to the Director any change in the information required by this Chapter within twenty-one (21) days of learning of the change

14. Application shall be executed under oath.

(Code 1969, § 22-5; Ord. of 12-1-1975)

Sec. 22-6. Application for License to perform massages; Investigation of applicant; issuance of license.

A. A.—Upon receipt of an application for a License to perform massages, on a form to be furnished by the Town, the original shall be referred to the Cehief of Ppolice who shall cause to be conducted an investigation to verify all information submitted by the applicant as well as of the applicant's character, reputation, moral integrity, physical and mental condition, and criminal record through a search of the Central Criminal Records Exchange, for the applicant and of all proposed employees of applicant, the results of which investigation shall be reduced to writing and returned to the Town Manager within 3045 days.

A.B. The form of the License Application shall conform in all manners as the application for a Permit under Section 22-5 of this Chapter.

C.B. If the Town Manager is thereupon satisfied that the character, reputation, moral integrity, physical and mental conditions of the applicant or his employees is inimical to public health, safety, morals or general welfare, or that facilities for the proposed massage salon, massage parlor, or massage therapy establishment ~~health club~~ are inadequate from the standpoint of public health, safety and welfare, or personnel to be employed as masseurs, ~~and~~ and masseuses, and massage therapist are not properly trained, he shall deny the application in writing, stating his reasons for the denial and notifying the applicant within seven days that his application is disapproved.

D.C. If the Town Manager is satisfied as a result of the said investigation that the criminal record, character, reputation, moral integrity or physical and mental conditions of the applicant are not a detriment to the public safety, health and welfare, he shall approve the said application and notify the applicant within seven days, in writing, of such approval.

E.D. Any applicant aggrieved by the decision of the Town Manager may appeal to the Town Council within 20 days of the Town Manager's decision, provided that his appeal be filed in written form stating his grievances and his reasons for contesting the ruling of the Town Manager. The council thereupon shall grant applicant a full and public hearing and may overrule the decision of the Town Manager by a two-thirds vote of all members of council.

(Code 1969, § 22-6; Ord. of 12-1-1975)

Commented [SDB4]: Do we want the Town Manager to continue to issue the Permit and License or designate another Director?

Commented [SDB5]: Leave or Delete? Fairfax County has an appeal to the Consumer Protection Commission, but the Town does not operate such a commission.

Sec. 22-7. Training of masseur or masseuse or massage therapist.

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

~~A. Said courses shall pertain to anatomy, physiology, hygiene, first aid, exercise therapy, massage techniques and related aspects of the art and science.~~

~~B. A course of study in body massage shall constitute 1,000 hours of study in connection with an approved school:~~

~~(1) 500 hours of which shall be accredited instructional hours pertaining to:~~

~~(a) Classroom or clinical training in therapeutic massage and techniques;~~

~~(b) Classroom or clinical instruction or contraindications 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 systems; and~~

~~(2) The additional 500 hours may be accomplished simultaneously with the academic, clinical or classroom or laboratory training by virtue of what is commonly known as "on the job training" or can be certified to by an employer of a masseur or masseuse by sworn affidavit as having been accomplished during or before the effective date of the ordinance from which this chapter is derived.~~

~~(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.~~

~~C. A school or institution shall constitute an approved school for the purposes of this chapter when it meets the following criteria:~~

~~(1) Is certified as a school or educational institution by the state board of education, or like board in the state where located or the District of Columbia;~~

~~(2) Is approved or recognized by, or affiliated with:~~

~~(a) The American Massage Therapy Association, Inc.; or~~

~~(b) The National Certification Board for Therapeutic Massage and Bodyworks;~~

~~(3) Is licensed to do business as a school or educational institution where located; and~~

~~(4) Provides the requisite training herein described.~~

Compliance with this section shall first be determined by the Town Manager with the same rights of appeal and hearing to the Town Council as elsewhere granted in this chapter.

(Code 1969, § 22-7; Ord. of 12-1-1975; Ord. of 11-8-1994)

Sec. 22-7.1. Authority to practice.

~~Notwithstanding the provisions of section 22-7, any certified massage therapist may be authorized to practice massage therapy.~~

~~(Code 1969, § 22-7.1; Ord. of 12-1-1975; Ord. of 10-28-1996)~~

Commented [SDB6]: Not needed if we require state certification under 22-7 for all employees providing massages except where exempt under 22-8

Sec. 22-8. Permits.

- A. No permit shall be issued for the operation of any massage salon, massage parlor, or massage therapy establishment ~~or health club~~ except to an owner or manager who is either:
- (1) A physician;
 - (2) A registered nurse with at least two years' nursing experience;
 - (3) A licensed practical nurse with at least four years' nursing experience;
 - (4) A registered physical therapist; ~~or~~
 - (5) Other licensed doctor or medical person; or
 - (6) A massage therapist certified as a massage therapist by the Board of Nursing of the Commonwealth of Virginia.
- B. It shall be unlawful for any person to own or manage a massage salon, ~~or massage parlor health club, or massage therapy establishment~~, as defined herein, or to give a massage within the Town, or to offer to give a massage in the Town, or to offer to give a massage elsewhere if such offer is made within the Town, or for any masseur, ~~or masseuse~~, or massage therapist to give or offer a massage without a valid non-suspended permit or license issued pursuant to this chapter. Said permit and licenses for each masseur, masseuse and/or massage therapist must be conspicuously posted in the massage salon or health club; that is, 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, said permit must be available on request.~~
- 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. It shall be unlawful for any person to establish, maintain or operate a health club in which he or a masseur, or masseuse or massage therapist who does not have a valid non-suspended permit or license pursuant to this chapter performs, or offers to perform, or where it is offered to perform massages, or to offer a massage in the Town or elsewhere except as provided for in this chapter.

(Code 1969, § 22-8; Ord. of 12-1-1975)

Sec. 22-9. Expiration.

- A. All permits and licenses issued hereunder shall be annual and expire 12 months after issuance and must be renewed in accordance with the provisions of this Chapter. ~~or~~

~~December 31 of the year issued, and be subject to all other applicable provisions of this chapter.~~

- B. All ~~permits, licenses~~ issued hereunder shall be deemed null and void upon the sale, lease, or transfer of any interest in the said massage salon, ~~massage parlor~~, or ~~massage therapy establishment health club~~ for which issued.

(Code 1969, § 22-9; Ord. of 12-1-1975)

Sec. 22-10. Inspection and Right of Entry.

- A. ~~The Director, the Chief of Police, the Fairfax County Director of Health, the Zoning Administrator and the Fairfax County Building Official, the Director of Finance, or their duly authorized agents, are hereby authorized to enter, examine and survey, during business hours, any premises in the Town for which a massage salon, massage parlorhealth club, or massage therapy establishment permit and/or license has been issued pursuant to this Chapter for the purpose of inspection and to enforce the provisions of this Chapter. The Director of Health 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. For the purposes of inspection under this chapter, the entrance to any such massage salon, massage parlor, or massage therapy establishment shall remain unlocked during its business hours and while any massage is being performed.~~

Sec. 22-1~~10~~. Sanitation.

- A. All equipment, shower stalls, toilets, lavatories, and any other such accoutrements of the establishment shall be of non-porous materials and regularly treated with disinfectants and shall be maintained in a clean and sanitary condition at all times.
- B. Health inspectors shall be given access to any part of the quarters of a ~~massage salon, massage parlor, or massage therapy establishmenthealth club~~ for purposes of inspection at all reasonable times.
- C. Each ~~massage salon, massage parlor, or massage therapy establishmenthealth club~~ shall be equipped with toilet and lavatory facilities for patrons and separate, readily available toilet and lavatory facilities for personnel.
- D. Either the club quarters or the floor of the building on which the quarters are located shall be equipped with a lavatory for custodial services. In multiple-storied but small buildings, the custodial lavatory may be located within 100 feet of the club quarters.

(Code 1969, § 22-10; Ord. of 12-1-1975)

Sec. 22-121. Hygiene.

- A. No person shall practice any of the services of a massage salon, massage parlor, or massage therapist establishment ~~health club~~ without a certificate of good health commensurate with the nature of the services rendered. Such certificate shall be renewed every six months.
- B. No massage salon, massage parlor, or massage therapist establishment ~~health club~~ 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, however, that a duly licensed physician may certify that a patron may be safely served, prescribing the condition thereof.
- C. All personnel shall wash their hands in hot running water, using a proper soap or disinfectant, before giving any service or treatment to each separate patron.
- D. All towels and tissue, all sheets or other covering shall be used singularly for each patron and discarded for laundry or disposal immediately after use.
- E. Non-disposable tools of the trade shall be disinfected after use upon one patron.

(Code 1969, § 22-11; Ord. of 12-1-1975)

Sec. 22-132. Environment.

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

(Code 1969, § 22-12; Ord. of 12-1-1975)

Sec. 22-143. Violation.

- (a) A person who violates any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed ~~\$2,500.00~~ ~~1,000.00~~ or by imprisonment in jail not exceeding 12 months, or by both such fine and imprisonment. Each day of violation shall constitute a separate offense.
- (b) If any part of this chapter is found by a court to be insupportable in law, such part is separable and shall not affect the chapter as to its other parts.
- (c) This chapter shall be construed to be compatible with and not in conflict with supplementary sections of chapter 8, pertaining to licenses, and chapter 10, pertaining to miscellaneous offenses.

(Code 1969, § 22-13; Ord. of 12-1-1975)

Commented [SDB7]: Does the health department inspect health/exercise clubs?

Sec. 22-15. Revocation or suspension of permits and/or licenses.

- (a) Grounds for revocation of any permit or license granted under this Chapter exist if the permittee, operator, licensee, or manager has committed any disqualifying offense or repeatedly has had a permit/license 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 Director believes that grounds for revocation of a permit exist, the Director shall give the permittee/licensee written notice enumerating the grounds and declaring the Director'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/licensee's last known address, at least ten (10) days prior to the date set for the hearing. At the hearing, the permittee/licensee may be represented by counsel, may cross-examine witnesses and may present evidence in his favor. If the Director finds that any ground for revocation in fact exists, the Director shall revoke the permit. The Director 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 with the Town Manager within thirty (30) days after a permittee/licensee receives the notice and shall specify the grounds for appeal. The Director's action remains in effect during the pendency of the appeal. The Town Manager shall hold an appeal hearing as promptly as practicable and in no event more than sixty (60) days after the appeal is filed.

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- (b) Grounds for suspension of any permit granted under this Chapter exist if the permittee/licensee 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 Director or any person with a right of entry under § 22-10 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 Director may end a suspension at any time if the reason for the suspension is corrected. Any appeal shall be filed by the permittee with the Town Manager within thirty (30) days after a permittee/licensee receives the suspension order and shall specify the grounds for appeal. The Town Manager shall hold an appeal hearing as promptly as practicable and in no event more than sixty (60) days after the appeal is filed.

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Section 2: This Ordinance shall become effective ten (10) days following notice of adoption by the Town Council.

Passed and approved this _____ day of _____, 2022.

Linda J. Colbert, Mayor

ATTEST:

Town Clerk

c:\SDB\Ordinances\Chapter 22 MassageSalons 06 09 2022