

**TITLE XI: BUSINESS REGULATIONS**

**CHAPTER 113: MASSAGE THERAPISTS AND MASSAGE THERAPY  
(Regulating Massage Therapists and Massage Therapy Establishments)**

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### § 113.01 PURPOSE AND OBJECTIVE.

The therapeutic application of massage is becoming more widely recognized and used, and with the increased use of massage therapy has come a greater likelihood of the practice of massage therapy by individuals with inadequate training and of chance of harm to the public. In the interest of public health, safety, welfare and morals, and to protect the public from unqualified practitioners and unethical businesses, the following privilege license provisions and regulations are hereby adopted.

### § 113.02 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Business or Profession of Massage:** The massage of any person for a fee or for other consideration.

**Chief of Police:** Police Chief for the Town of Black Mountain or his/her designee.

**Massage:** Any form of manipulation of body muscles or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

**Massage Therapist:** Any person who is engaged in the business or profession of massage therapy, and who receives compensation for his or her services.

**Massage Therapy School:** Any educational facility for massage which meets minimum standards for training and curriculum as determined by the North Carolina Division of Proprietary School Services, and is licensed by the North Carolina State Board of Community Colleges.

**Massage Therapy Establishment:** Any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, massage parlors, or similar establishments by whatever name designated. A Massage School is a Massage Therapy Establishment only if some portion of the premises is used for the business or profession of massage.

**Private Parts:** The penis, scrotum, mons veneris, vulva or vaginal area.

### § 113.03 EXCEPTIONS.

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

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1. Medical doctors, chiropractors, osteopaths, physical therapists or podiatrists duly licensed to practice in this State, and Registered or Licensed Practical Nurses governed by the North Carolina Nursing Practices Act.
2. Employees of nursing homes and hospitals which are duly licensed by the State of North Carolina.
3. Athletic directors or trainers who are affiliated with an accredited educational institution or professional sports team, and whose work is limited to athletic team members.
4. Licensed cosmetologists, barbers or beauty culturists who do not practice, or hold themselves out to practice massage therapy other than what is customarily provided in such establishments, solely for the purpose of beautification.

### **LICENSING PROVISIONS RELATIVE TO MASSAGE THERAPISTS AND MASSAGE THERAPY ESTABLISHMENTS.**

#### **§ 113.10 APPLICATION PROCEDURE.**

1. No person, partnership, corporation or association shall operate as a Massage Therapist or a Massage Therapy Establishment as herein defined without holding a valid Town of Black Mountain privilege license as provided herein.
2. Every application for the privilege license to operate as a Massage Therapist or a Massage Therapy Establishment shall be on a form supplied by the Zoning Administrator and filed with the Zoning Administrator. The application shall be accompanied by a one time, non-refundable processing fee of twenty-five dollars (\$25.00). The application shall be made under oath and shall contain the following information:

##### **a. Massage Therapist.**

- (1) The name, age and residence address of the applicant; and
- (2) A complete statement of the previous businesses or occupations of the applicant for the two (2) years immediately preceding the date of the application; and
- (3) The date and place of applicant's birth and the residence address or addresses of the applicant for the three (3) years immediately preceding the date of application; and
- (4) A complete statement of all convictions of the applicant for any felonies, or for violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage therapy, or for any offense involving sexual misconduct, whether in this jurisdiction or any other, including N.C. Gen. Stat. Sec. 14-177 through N.C.

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Gen. Stat. Sec. 14-202.1 Article 26 (offenses against public morality and decency) and N.C. Gen. Stat. Secs. 14-203 through 14-208. Article 27 (Prostitution), or any Federal statute relating to prostitution; and

(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 therapy.

(6) Attachment of a certificate of graduation from a Massage Therapy School which is licensed by the North Carolina State Board of Community Colleges or attachment of a certificate of graduation from a school or institute of massage therapy which offers a minimum curriculum of five hundred (500) hours of classroom instruction, and is licensed by an equivalent licensing authority of another state.

(A) In the absence of a certificate of graduation from a 500 hour certified curriculum, the applicant may show proof that he/she has successfully completed and passed the National Certification Exam as presented by the National Certification Board for Therapeutic Massage and Bodywork.

### b. **Massage Therapy Establishments.**

(1) If the applicant is an individual, the name, age and residence address of such person; if the applicant is a partnership, corporation or association, the name and residence address of all principals, directors, and officers of said partnership, corporation or association, including the name and residence address of any persons having a legal or beneficial ownership interest in the proposed Massage Therapy Establishment; and

(2) The address of the premises where the proposed Massage Therapy Establishment shall be located; and

(3) A complete statement of all convictions of any person whose name is required to be given in paragraph 2.b.(1) of this Section for any offense as previously set out in paragraph 2.a.(5) of this Section; and

(4) A complete statement of any revocation, by any governmental unit, or any license to operate a Massage Therapy Establishment or to engage in the business or profession of Massage Therapy held by any person whose name is required to be given in paragraph 2.b.(1) of this Section; and

(5) The name and address of any other establishment or business owned or operated by any person whose name is required to be given in paragraph 2.b.(1) of this Section, wherein the business or profession of massage is practiced.

### 3. **Investigation.**

a. Upon payment of the application fee as set forth in this Section and upon submission of all of the information required by the application under this Section, the Zoning

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Administrator shall transmit a copy of the application to the Police Chief for an investigative report, to the Fire Chief to determine compliance with any law relating to fire protection, and to the Planning & Zoning Department to determine compliance with all zoning and building regulations and ordinances. The Chief of Police, the Fire Chief, and the Zoning Administrator shall, within a reasonable time, not to exceed thirty (30) days, report the results of their examinations.

b. An application in proper form, accompanied by all reports required by this ordinance and by the application fee as required herein, shall be submitted to the Zoning Administrator who shall grant a license to operate as a Massage Therapist or a Massage Therapy Establishment if:

(1) The application contains no misstatement of fact; and

(2) The applicant, and any person having legal or beneficial ownership interest in the proposed establishment is 21 years of age or older and has not been convicted of any crime involving sexual misconduct or offenses against public morality and decency; and

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

(4) The applicant, or any principal, director or officer of the applicant, or any person having a legal or beneficial ownership interest in the proposed establishment has not, during the three-year period preceding the application, suffered a revocation of any license granted by any governmental unit for the purpose of engaging in the business or profession of Massage Therapy, or operating a Massage Therapy Establishment, as defined by such governmental unit.

### **§ 113.11 NAMES OF EMPLOYEES FILED WITH CHIEF OF POLICE.**

It shall be the duty of all persons holding a license under this ordinance to file with the Chief of Police the names of all employees, their home addresses, home telephone numbers and places of employment. Changes in the list of employees with the names of new employees must be filed with the Chief of Police within ten (10) days from the date of such change.

### **§ 113.12 MASSAGE OF PRIVATE PARTS IS PROHIBITED.**

It shall be unlawful for any person to massage or to offer to massage the private parts of another person regardless of sex.

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**§ 113.13 REVOCATION OR SUSPENSION OF LICENSES.**

1. The license of a Massage Therapy Establishment issued pursuant to this Section may be revoked or suspended by the Chief of Police after a hearing, as hereinafter set out, for the following reasons:

a. The following shall subject the licensee to revocation:

(1) The licensee, or any agent of the licensee, employs or permits any individual to perform massage therapy on the premises of the licensee's Massage Therapy Establishment or business when the individual does not hold a current valid license to practice massage therapy; or

(2) The licensee, or the legal or beneficial owner of any interest in the licensee is convicted of any crime involving sexual misconduct including, but not limited to, those set out in Section 113.10 herein; or

(3) The licensee is guilty of fraudulent, false, misleading or deceptive advertising, including the use of the term "massage therapy" or "massage" to describe, promote or advertise any type of business activity or service offered which is expressly not a massage as defined herein, or has otherwise fraudulently engaged in the business or profession of massage therapy; or

(4) The licensee violates Section 113.12 of this ordinance.

b. The following shall subject the licensee to suspension:

(1) With the exception of Section 113.12, the licensee or any employee of the licensee violates any provision of this ordinance; or

(2) Any employee of the licensee is convicted of any crime involving sexual misconduct, including, but not limited to, those set out in Section 113.10 herein; or

(3) The licensee violates any zoning, building or fire prevention ordinance.

2. The license of a Massage Therapist, issued pursuant to this ordinance may be revoked or suspended by the Chief of Police after a hearing, as hereinafter set out, for the following reasons:

a. The following shall subject the licensee to revocation:

(1) The licensee is guilty of fraudulent, false, misleading or deceptive advertising, including the use of the term "massage therapy" or "massage" to describe, promote or advertise any type of business activity or service offered which is expressly not massage therapy as defined in Section 113.10 herein, or has otherwise fraudulently engaged in practicing massage therapy; or

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(2) The licensee has been convicted of a crime involving sexual misconduct including those set out in Section 113.10 herein; or

(3) The licensee has fraudulently obtained a license pursuant to the provisions of this ordinance; or

(4) The licensee has allowed the use of his or her license by an unlicensed person; or

(5) The licensee violates Section 113.12 of this ordinance.

b. The following shall subject the licensee to suspension:

(1) With the exception of Section 113.12, the licensee or any employee of the licensee violates any provision of the ordinance; or

(2) The licensee is convicted of a violation of the North Carolina Control Substances Law.

3. The Chief of Police may, upon notice and an opportunity to be heard, revoke or suspend a license issued pursuant to the ordinance. Notice of a hearing shall be given in writing and served at least ten (10) days prior to the date of the hearing. The notice shall state the grounds of the complaint against the license holder and shall designate the time and place where the hearing will be held.

4. The notice of the hearing may be served by hand delivery, by certified mail return receipt requested or by leaving such notice at the place of business or residence of the license holder in the custody of a person of suitable age and discretion.

### § 113.14 APPEALS.

1. An appeal of the refusal of the Zoning Administrator to issue a license, or the decision of the Chief of Police to suspend or revoke a license, shall be taken to the Buncombe County Superior Court within thirty (30) days after the date of the written refusal to issue a license or the written decision of the Chief of Police to suspend or revoke a license.

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**STANDARDS OF OPERATION**

**§ 113.20 PATRONAGE OF MASSAGE ESTABLISHMENTS BY MINORS;  
EMPLOYMENT OF MINORS.**

1. No Massage Therapist or Massage Therapy Establishment shall massage or treat any person under the age of twenty one (21) years or permit or condone such treatment, except when the parent or guardian of the person under twenty one (21) accompanies the person during the massage treatment or upon written order of a licensed physician, osteopath, chiropractor, podiatrist or registered physical therapist, such order being dated and in the possession of the person giving the massage or treatment.

2. No person licensed pursuant to this ordinance shall employ any person under the age of twenty one (21) years in the operation of the massage business.

**§ 113.21 HOURS OF OPERATION.**

1. No Massage Therapist or Massage Therapy Establishment shall massage or treat any person or engage in the business or profession of massage, before 8:00 a.m. or after 10:00 p.m.

2. No person licensed under this ordinance shall admit customers or prospective customers, or remain open for business, or allow, or permit or condone any massage or treatment of any person upon the premises before 8:00 a.m. or after 10:00 p.m.

**§ 113.22 DISPLAY OF PRIVILEGE LICENSE.**

1. Every Massage Therapist shall at all times display in his or her work area the privilege license required by this ordinance for the practice of Massage Therapy; however, a Massage Therapist practicing at a site other than his or her regular work area may comply with this requirement by having in his or her possession a picture identification containing the privilege license information.

2. Every operator of a Massage Therapy Establishment shall prominently display the privilege license required by this ordinance at the Massage Therapy Establishment.

**§ 113.23 RECORDS OF LICENSEE.**

It shall be the duty of all persons granted a license under this ordinance to maintain correct and accurate records of the names and addresses of the persons receiving massages at such establishments, the type of massages administered and the name of the person of the establishment administering such massage. Such records shall be subject to inspection at any reasonable time by the Chief of Police.

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**§ 113.24 ANNUAL PRIVILEGE LICENSE.**

The licenses required under this ordinance are annual privilege licenses. Such licenses shall be due and payable in the same manner as prescribed for other privilege licenses issued by the Town pursuant to the license and privilege tax ordinance of the Town.

At the time of the adoption of this ordinance, the annual privilege license fees shall be in the following amounts:

Massage Therapist	\$25.00
Massage Therapy Establishment	\$50.00

**§ 113.25 TRANSFERENCE OF LICENSE PROHIBITED.**

1. Once issued, no privilege license to operate as a Massage Therapist or for the operation of a Massage Therapy Establishment may be transferred from one person, corporation, name or location to another.

2. No person, corporation, partnership or association licensed to operate as a Massage Therapist or a Massage Therapy Establishment under the provisions of this ordinance shall permit any person to perform massage therapy upon the premises operated by the licensee or in any other location under their authority or at the direction unless the person performing such massage therapy is licensed under this ordinance.