

SUMMIT COUNTY CODIFIED ORDINANCES

Chapter 749 Massage Establishments

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CROSS REFERENCES

Obscenity and sex offenses - see GEN. OFF. Ch. 533

749.01. DEFINITIONS.

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

(a) "Applicant" means a person applying for a permit under this chapter and includes all partners, including limited partners of a partnership applicant, any officer or director of a corporate applicant, and any stockholder holding more than two percent (2%) of the stock of a corporate applicant.

(b) "Employee" means any and all persons, other than the masseurs or masseuses, who render any service to the permittee, who receive compensation directly from the permittee, and who have no physical contact with customers and clients.

(c) "Health Officer" means the Health Commissioner or the Health Department, of Summit County or an authorized representative.

(d) "Massage" means any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparation commonly used in this practice.

(e) "Massage establishment" means any establishment having a fixed place of business where any person, firm, association or corporation engages in, or carries on, any of the activities included in the definition of "massage" in subsection (d) hereof.

(f) "Masseur or masseuse" means any individual who, for any consideration whatsoever, engages in the practice of massage.

(g) "Permittee" means the operator of a massage establishment.

(h) "Person" means any individual, co-partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

(i) "Sexual or genital area" means the genitals, pubic area, anus and perineum of any person or the vulva or breasts of a female.

(Ord. 90-93. Approved 2-7-90.)

749.02. PERMIT REQUIRED.

No person shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises in the County, the operation of a massage establishment without first having obtained a permit therefor from the Auditor of the County of Summit after approval of the Health Officer.

(Ord. 90-93. Approved 2-7-90.)

749.03 PERMIT APPLICATION; FEE.

(a) Every applicant for a permit to maintain, operate or conduct a massage establishment shall file an application in duplicate, under oath, sworn to in front of a notary public, with the Auditor of the County of Summit, upon a form provided by the Auditor and pay a nonrefundable filing fee of one hundred eighty-five dollars (\$185.00) to the Auditor who shall issue a receipt which shall be attached to the application filed with the Auditor.

(b) The Auditor shall, within five days, refer copies of such application to the appropriate Fire Department, the Health Commissioner, the Building Inspection Department, and the appropriate Police Department. These agencies shall, within thirty days, inspect the premises proposed to be operated as a massage establishment and make written recommendations to the Auditor concerning compliance with the codes and regulations that they administer.

(c) Within ten days of receipt of the recommendations of the aforesaid agencies, the Auditor shall notify the applicant that his application is granted, denied or held for further investigation. The

period of such additional investigation shall not exceed an additional thirty days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the Auditor shall advise the applicant, in writing, whether the application is granted or denied.

(d) Whenever an application is denied or held for further investigation, the Auditor shall advise the applicant in writing of the reasons for such action.

(e) The failure or refusal of the applicant to promptly give information relevant to the investigation of the application or his or her refusal to submit to or cooperate with any inspection required by this chapter shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the Auditor.

(Ord. 94-320. Approved 6-30-94.)

749.04 CONTENTS OF APPLICATION.

(a) The application for a permit to operate a massage establishment shall set forth the exact nature of the massage to be administered, the proposed place of business and facilities therefor.

(b) In addition to the foregoing, any applicant for a permit, including any partner or limited partner of a partnership applicant, and any officer or director of a corporate applicant and any stockholder holding more than two percent (2%) of the stock of a corporate applicant, shall furnish the following information:

- (1) His/her name and current residence address;
- (2) Copy of documentation that shows the individual is at least eighteen years of age;
- (3) All residential addresses for the past three years;
- (4) The applicant's height, weight and color of eyes and hair;
- (5) The business, occupation or employment of the applicant for the three years immediately preceding the filing of the application;
- (6) The massage or similar business license history of the applicant; whether such person, in previously operating in this or another county or city or state under license, has had such license revoked or suspended, the reason therefor and the business activity or occupation subsequent to such action of suspension or revocation;
- (7) All criminal city or county ordinances violated, convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations, within the last five years;
- (8) The fingerprints and two front-face portrait photographs of the applicant taken within thirty days of the date of the application and at least two inches by two inches in size; and

- (9) If the applicant is a corporation, or a partner of a partnership is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation.

(Ord. 94-320. Approved 6-30-94.)

749.05 ISSUANCE OF PERMITS; EFFECTIVE PERIOD.

(a) Upon receipt of the certificate of the Health Officer that the massage establishment is in compliance with all of the health and sanitation requirements of this chapter, and the certificate of the appropriate Building Inspector and Fire Inspector that the building meets the requirements of the Building Code and the fire prevention regulations, respectively, and the certificate of the appropriate law enforcement agency that the applicant or applicants have not been convicted in a court of competent jurisdiction of the crimes listed in subsection (a)(2) hereof, the Auditor shall issue a permit to maintain, operate, or conduct a massage establishment, unless he finds:

- (1) That the operation, as proposed by the applicant if permitted would not have complied with all applicable laws of the County;
- (2) That the applicant and any other person who will be directly or indirectly engaged in the management and operation of a massage establishment has been convicted of a felony; an offense involving sexual misconduct with children; prostitution; soliciting for purposes of prostitution; pandering; keeping a place of prostitution; pimping; any crime involving dishonesty, fraud or deceit; or any other offense opposed to decency and morality; within the last five years.

(b) Every massage establishment permit issued pursuant to this chapter will terminate at the expiration of one year from the date of its issuance, unless sooner suspended or revoked. The owner must request re-issuance of a permit from the Auditor's Office pursuant to this section.

(Ord. 94-320. Approved 6-30-94.)

749.06 REVOCATION OR SUSPENSION OF PERMITS.

(a) Any permit issued for a massage establishment may be revoked or suspended by the Auditor after a hearing for good cause, or in any case where any of the provisions of this chapter are violated, or where an employee of the permittee, including a masseur or masseuse, is engaged in any conduct at the permittee's place of business which violates any of the provisions of this chapter or any State law which provides for imprisonment, and the permittee has actual or constructive knowledge of such violation or the permittee should have actual or constructive knowledge by due diligence, or where an applicant has made a false statement on an application for a permit under this chapter, or in any case where the permittee or licensee refused to permit any duly authorized police officer or health inspector of the County to inspect the premises or the operations therein. Such permit may also be revoked or suspended by the Auditor after hearing, upon the recommendation of the Health Officer, when such business is being managed, conducted or maintained without regard for the public health or the health of patrons or customers or without due regard to proper sanitation or hygiene.

(b) Any violation of this chapter by any employee of the permittee, including a masseur or masseuse, shall be cause for suspension of the permit for not more than thirty days in the first instance. Any subsequent violation of this chapter by any employee of the permittee, including a masseur or masseuse, shall be cause for suspension or revocation of the permit.

(c) The Auditor before revoking or suspending any permit, shall give the permittee at least ten days written notice of the charges against him or her and the opportunity to present evidence before a Review Board. The Summit County Council President shall appoint three, district or at-large, County Council members, to serve on the Review Board. When possible, the President shall include the Council member that represents the district in which the establishment is located. The President may appoint a different Review Board to hear each appeal as necessary. The applicant shall file notice in writing with Council of the applicant's intention to appeal the auditor's decision to the Review Board. The applicant shall file a copy of the appeal with the County Auditor. Council shall schedule such appeal hearing and notify the applicant as to the place, date, and time within thirty days after notification. After a hearing on the matter, the Board may sustain, disapprove, or modify such order. Such decision by the Review Board constitutes a final appealable order and is subject to appeal under Ohio R.C. 2506.01.

(Ord. 94-320. Approved 6-30-94.)

749.07 MASSEUR OR MASSEUSE PERMIT REQUIRED.

Any person, including an applicant for a massage establishment permit, who engages in the practice of massage, shall file an application for a masseur or masseuse permit with the Auditor upon a form provided by such Auditor and shall pay a nonrefundable filing fee of eighty-five dollars (\$85.00), receipt to be attached to the application filed with the Auditor.

(Ord. 90-93. Approved 2-7-90.)

749.08 APPLICATION FORM FOR MASSEUR OR MASSEUSE PERMIT.

The application for a masseur or masseuse permit shall contain the following information:

- (a) The name and current residence address of the applicant;
- (b) The social security number and driver's license number, if any, of the applicant;
- (c) The applicant's weight, height and color of hair and eyes;
- (d) Copy of documentation that shows the applicant is at least eighteen years of age;
- (e) The business, occupation or employment of the applicant for the three years preceding the date of application;
- (f) Whether the applicant has been convicted of, pleaded nolo contendere to, or suffered a forfeiture on a bond involving a charge of committing any crime, except minor traffic violations, within the last five years. If the answer is in the affirmative, a statement must be made giving the place and the court in which such conviction, plea or forfeiture was had, the specific charge under which the conviction, plea or forfeiture was obtained, and the sentence imposed as a result thereof;
- (g) The Sheriff's Department, or his delegate, shall have the right to take fingerprints and a photograph of the applicant and the right to confirm the information submitted. Refusal or being unable to confirm information is grounds for denial of a permit;

(h) All persons who desire to perform the services of masseur or masseuse at a massage establishment shall first undergo a physical examination for contagious and communicable diseases, which shall include a recognized blood test for syphilis, a culture for gonorrhea, a test or tests which demonstrate freedom from chlamydia, a test or tests which will demonstrate freedom from tuberculosis, which is to be made and interpreted by a licensed physician acceptable to the Health Officer, and such other laboratory test done in a laboratory acceptable to the Health Officer, as may be necessitated by the above examination, and shall furnish to the Health Officer a certificate based upon the applicant's physical examination and issued within thirty days of such examination, signed by a physician duly licensed by the State and stating that the person examined is either free from any contagious or communicable disease or incapable of communicating any of such diseases to others. Such persons shall undergo the physical examination referred to above and submit to the Health Officer with a copy to the County Auditor, the certificate required herein prior to commencement of their employment and at least once every six months thereafter.

(Ord. 94-320. Approved 6-30-94.)

749.09 ISSUANCE OF MASSEUR OR MASSEUSE PERMITS EFFECTIVE PERIOD.

(a) The Auditor may issue a masseur or masseuse permit within twenty-one days following application unless he finds that the applicant for the permit has been convicted within the last five years of a felony; an offense involving sexual misconduct with children; keeping or residing in a house of ill fame; solicitation of a lewd or unlawful act; prostitution; pandering; or any crime involving dishonesty, fraud or deceit.

(b) Every masseur or masseuse permit issued pursuant to this chapter shall terminate at the expiration of one year from the date of issuance, unless sooner suspended or revoked.

(c) If the application is denied, the applicant shall have the right to appeal to the Review Board as referred to in Section 749.06(c). The applicant shall within ten days after notification of denial file notice in writing with the Auditor of applicant's intention to appeal to the Review Board. The Review Board, after the hearing, may sustain, disapprove or modify such order.

(Ord. 94-320. Approved 6-30-94.)

749.10 REVOCATION OF MASSEUR OR MASSEUSE PERMIT.

(a) A masseur or masseuse permit issued by the Auditor shall be revoked or suspended where it appears that the masseur or masseuse has been convicted of any offense which would be cause for denial of a permit upon an original application; has made a false statement on an application for a permit; or has committed an act in violation of this chapter.

(b) The Auditor, in revoking or suspending a masseur or masseuse permit, shall give the permit holder a written notice specifying the grounds therefor. Such person may, within ten days of such revocation or suspension, file a written request with the Auditor for a hearing before the Review Board. The Review Board after such hearing, may sustain, disapprove or modify such order.

(Ord. 94-320. Approved 6-30-94.)

749.11 FACILITIES.

(a) No massage establishment shall be issued a permit, nor be operated, established or maintained in the County unless an inspection by the Health Officer, and appropriate Building and Fire Inspector reveals that the establishment complies with each of the following minimum requirements:

- (1) Construction of rooms used for toilets, tubs, steam baths and showers shall be made waterproof with approved waterproof materials and shall be installed in accordance with the Building Code.
- (2) All massage tables, bathtubs, shower stalls and steam or bath areas and floors shall have surfaces which may be readily disinfected.
- (3) Adequate bathing, dressing and locker facilities shall be provided for the patrons to be served at any given time. In the event male and female patrons are to be served simultaneously, separate bathing, dressing, locker and massage room facilities shall be provided.
- (4) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.
- (5) Closed cabinets shall be provided and used for the storage of clean linen, towels, and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly-covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.
- (6) Toilet facilities shall be provided in convenient locations. When employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided for each sex. A single water closet per sex shall be provided for each twenty or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the sex accommodated therein.
- (7) Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule immediately adjacent thereto. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels.
- (8) The premises shall be equipped with a service sink for custodial services.
- (9) The premises shall meet the requirements of the Building Code and fire prevention regulations.

(b) The Health Officer, the appropriate Building Inspector and Fire Inspector shall certify that the proposed massage establishment complies with all the requirements of this section and shall send such certification to the Auditor.

(Ord. 90-93. Approved 2-7-90.)

749.12 OPERATING REQUIREMENTS.

(a) Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.

(b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.

(c) All employees, including masseurs and masseuses, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas, whose use is restricted to the massage establishment. A separate dressing room for each sex must be available on the premises and each dressing room shall contain a tub or shower in good working order and individual lockers for each employee and customer. Doors to such dressing rooms shall open inward and shall be self-closing.

(d) All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in a sanitary manner.

(e) The sexual or genital area of patrons shall be covered by towels, cloths or undergarments when in the presence of an employee, masseur or masseuse.

(f) No person, knowingly, in a massage establishment, shall place his or her hand upon, touch with any part of his or her body, fondle in any manner, or massage a sexual or genital area of any other person.

(g) No masseur or masseuse, employee or operator shall perform or offer or agree to perform any act which would require the touching of the patron's genital area.

(h) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and showers shall be thoroughly cleaned after each use. When carpeting is used on the floors, it shall be kept dry.

(i) Oil, creams, lotions or other preparations used in administering massages shall be kept in clean, closed containers or cabinets.

(j) Eating in the massage work areas shall not be permitted. Animals, except for seeing-eye dogs, shall not be permitted in the massage work area.

(k) Each masseur and masseuse shall wash his or her hands in hot running water, using a proper soap or disinfectant before administering a massage to each patron.

(Ord. 90-93. Approved 2-7-90.)

749.13 INSPECTIONS.

The appropriate Health and Police Department shall, from time to time, and at least twice a year, make an inspection of each massage establishments granted a permit under the provisions of this chapter for the purposes of determining that the provisions of this chapter are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. If any violations are cited in writing, the inspector may give reasonable time to allow for corrections. No permittee

shall fail to allow such inspection officer access to the premises or hinder such officer in any manner.

(Ord. 94-320. Approved 6-30-94.)

749.14 EMPLOYMENT OF PERSON UNDER AGE EIGHTEEN.

No owner, proprietor, manager or other person in charge of any massage establishment shall employ any person who is not at least eighteen years of age.

(Ord. 90-93. Approved 2-7-90.)

749.15 IDENTIFICATION CARD.

The Auditor shall provide each masseur and masseuse granted a permit with an identification card which shall contain a photograph of the masseur or masseuse and the full name and permit number assigned to such masseur or masseuse. Such card shall be worn on the front of the outermost garment at all times during the hours of operation of any establishment granted a permit pursuant to this chapter.

(Ord. 90-93. Approved 2-7-90.)

749.16 TRANSFER OF PERMITS.

No permit for the operation of a massage establishment issued pursuant to the provisions of this chapter shall be transferable except with the written consent of the Auditor and approval of the Health Officer, provided, however, that upon the death or incapacity of the permittee, the massage establishment may continue in business for a reasonable period of time to allow for an orderly transfer of the permit.

(Ord. 90-93. Approved 2-7-90.)

749.17 DISPLAY OF PERMITS.

Every permittee shall display a valid permit in a conspicuous place within the massage establishment so that the same may be readily seen by persons upon entering the premises.

(Ord. 90-93. Approved 2-7-90.)

749.18 EMPLOYMENT OF MASSEURS AND MASSEUSES.

It shall be the responsibility of the permittee for the massage establishment or the employer of any person purporting to act as a masseur or masseuse to insure that each person employed as a masseur or masseuse has first obtained a valid permit pursuant to this chapter.

(Ord. 90-93. Approved 2-7-90.)

749.19 TIME LIMIT FOR FILING PERMIT APPLICATION.

All persons who presently operate a massage establishment or who are employed as a masseuse or masseur must file for a permit within thirty days of the effective date of this section.

Applications for renewal of permits shall be filed not more than two months nor less than one month prior to termination of an existing permit.

(Ord. 90-93. Approved 2-7-90.)

749.20 REAPPLICATION RESTRICTION.

(a) No person may reapply for a masseur or masseuse permit within one year of the date of a denial or revocation of the same by the Auditor and the Review Board.

(b) If any person has been denied a permit to operate a massage establishment at a given location or has had a permit revoked, then no person may submit an application to operate a massage establishment at the same location within one year of the denial or revocation by the Auditor and County Council.

(c) In addition to and not in limitation of subsection (b) hereof, no person who has been denied a permit to operate a massage establishment at a given location or has had a permit revoked may apply to operate a massage establishment at any other location within one year of the denial or revocation by the Auditor. This subsection shall not apply if the sole reason for the denial or revocation was that the physical facility of the massage establishment failed to meet any of the building requirements of all applicable political subdivisions including but not limited to Summit County and the State of Ohio.

(Ord. 94-320. Approved 6-30-94.)

749.21 APPLICATION OF CHAPTER.

This chapter shall not apply to hospitals, nursing homes, sanitariums or persons holding an unrevoked massage therapist license or an unrevoked certificate to practice the healing arts under the laws of the State, or persons working under the direct supervision and in their presence, for any such persons or in any such establishments, nor shall this chapter apply to barbers or cosmetologists lawfully carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued by the State.

(Ord. 94-320. Approved 6-30-94.)

749.22 RULES AND REGULATIONS.

The Review Board and/or the Health Officer, may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out the intent, of this chapter.

(Ord. 94-320. Approved 6-30-94.)

749.23 KEEPING OF RECORDS.

Every person who operates a massage establishment or practices or provides a massage shall, at all times, keep an appointment book in which the name and address of each and every patron shall be entered, together with the time, date, service provided and the price charged. Such appointment book shall be available at all times for inspection by either the Sheriff's Department, the Health Officer or an authorized representative.

(Ord. 90-93. Approved 2-7-90.)

749.24 PATRONS UNDER AGE EIGHTEEN.

No person shall permit any person under the age of eighteen years to come or remain on the premises of any massage establishment as a patron.

(Ord. 90-93. Approved 2-7-90.)

749.25 MAINTAINING A PUBLIC NUISANCE.

Any building used as a massage establishment in violation of this chapter with the intentional, knowing, reckless or negligent permission of the owner thereof, or the agent of the owner managing the building, together with all fixtures and other property used in violation of this chapter, are declared to be a nuisance.

(Ord. 90-93. Approved 2-7-90.)

749.26 REVIEW.

The decision of the Auditor with regard to the issuance, suspension or revocation of any permit under this chapter shall be reviewable by the Review Board upon the written request of the party filed with the Auditor within ten days of such refusal, revocation, or suspension. The Review Board shall review evidence previously submitted to the Auditor and any additional evidence presented with the written request for review. The decision of the Review Board upon such review shall be a final appealable order.

(Ord. 94-320. Approved 6-30-94.)

749.99 PENALTY.

Every person, except those persons who are specifically exempted by this chapter, whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employee or operator, or acting as a participant or worker in any way, who gives massages or conducts a massage establishment without first obtaining a permit and paying a license fee to do so from the County or who violates any of the provisions of this chapter, is guilty of a misdemeanor of the first degree.

(Ord. 94-320. Approved 6-30-94.)