

**CITY OF HAVELOCK
ORDINANCE AMENDMENT NO. 11-O-04**

CHAPTER 112: MASSAGE FACILITIES AND PRACTITIONERS

BE IT HEREBY ORDAINED by the Board of Commissioners of the City of Havelock, North Carolina that the following amendments be made to "**Title XI: Business Regulations, Chapter 112: Massage Facilities & Practitioners; Sections 112.15, 112.16, 112.17, 112.19, 112.35, 112.36, 112.37, 112.50, 112.51 and 112.52**" of the City of Havelock Code of Ordinances as follows:

CHAPTER 112: MASSAGE FACILITIES AND PRACTITIONERS

LICENSES; GENERALLY

SECTION 112.15 ACTION ON APPLICATIONS GENERALLY; ISSUANCE

(A) The City Clerk shall act on all applications submitted in proper form and accompanied by the appropriate application fee within twenty-one (21) days of the filing thereof. Upon approval, the City Clerk shall issue, within seventy-two (72) hours following approval, an appropriate license.

(B) Should the City Clerk fail to act upon an application submitted in proper form and accompanied by the appropriate filing fee within twenty-one (21) days of the filing thereof, the City Clerk shall issue the appropriate license to the applicant within seventy-two (72) hours following the twenty-first day after the filing.

(1989 Code, § 9-7) (Ord. passed 7-24-1972; Ord. 01-05, passed 6-11-2001)

SECTION 112.16 DISAPPROVAL OF APPLICATION

Upon the disapproval of any application submitted in proper form and accompanied by the appropriate application fee, the City Clerk shall notify the applicant of the disapproval within seventy-two (72) hours following this approval of the same. The notification shall be in writing, shall set forth the reasons therefor and shall inform the applicant that he or she is entitled to a hearing on the application at the next regularly scheduled meeting of the Board of Commissioners.

(1989 Code, § 9-8) (Ord. passed 7-24-1972; Ord. 01-05, passed 6-11-2001)

SECTION 112.17 HEARINGS

(A) *Statement of reasons for denial; presentation of evidence by applicant.* At all hearings held pursuant to Chapter 112.16, the City Clerk shall orally inform the applicant for a license under this chapter of the reasons for disapproval of his or her application. The applicant shall in turn be given full opportunity during the period of one hour to present witnesses and any evidence in his or her behalf which would support his or her position and in opposition to the findings of the City Clerk.

(B) *Presumption of qualification; time for results.* At all hearings, the applicant shall be entitled to a presumption of qualification for licensing under this chapter. The results of the hearing shall be made known to the applicant within seventy-two (72) hours following the hearing.

(C) *Decisions generally.* The Board shall either approve the issuance of the license by the City Clerk, with the City Clerk issuing the same within seventy-two (72) hours following the hearing, or the Board shall set forth in writing and mail to the applicant, at the address listed on his or her application, findings of fact supporting a disapproval, which findings of fact shall indicate that the issuance of a license under this chapter would contravene the general health, safety, welfare, or morals of the public in general.

(1989 Code, § 9-9) (Ord. passed 7-24-1972; Ord. 01-05, passed 6-11-2001)

SECTION 112.18 REVOCATION; GENERALLY

Failure of any massage practitioner, regulated facility, or owner, operators, or managers of a facility licensed, regulated, or subject to regulation under this chapter, or any other person otherwise licensed under the provisions of this chapter to comply with any provision of this chapter shall be grounds for the revocation of any license issued to the practitioner and/or facility pursuant to the provisions of this chapter, and the penalties provided by § 10.99 for a violation of this chapter shall apply in addition to any license revocation. It shall be the duty of the owner, operator, manager, or any other licensee to supervise their facilities and practitioners within their facilities, and to prevent violations of, and to ensure compliance with the provisions of this chapter within and about the premises subject to regulation under this chapter.

(1989 Code, § 9-10) (Ord. passed 7-24-1972; Ord. passed 7-28-1975; Ord. 01-05, passed 6-11-2001)

SECTION 112.19 REVOCATION; PROCEDURE

(A) *Notice of violation and hearing.* Upon information received by the City that a massage practitioner or regulated facility licensed under the provisions of this chapter has failed to fully comply with the provisions of this chapter, the City Clerk shall give written notice to the licensee advising him or her of the purported noncompliance, that the establishment of the noncompliance shall subject the licensee to a revocation of his or her license and setting forth a date and time for a hearing as to the purported noncompliance, which date and time shall be at least seventy-two (72) hours following notification of the same.

(B) *Time of hearing.* Hearings concerning noncompliance may be heard at a regularly scheduled meeting of the Board or at a special meeting thereof.

(C) *Recitation of violation at hearing; presentation of evidence by licensee.* At all hearings held pursuant to this section, the City Clerk shall orally inform the licensee of the purported noncompliance with this chapter. The licensee shall in turn be given full opportunity during the period of one hour to present witnesses and any evidence in his or her behalf which would support his or her position of compliance.

(D) *Presumption of compliance.* At all hearings, the licensee shall be entitled to a presumption of compliance with the provisions of this chapter.

(E) *Results.* The results of the hearing shall be made known to the applicant within seventy-two (72) hours following the hearing, notification shall be as follows.

(1) The Board shall either make a finding of compliance with this chapter and notify the licensee of the finding in writing, mailed to the licensee at the address listed on his or her application for license; or the Board shall make a finding of noncompliance and shall set forth in writing and mail to the licensee, at the address listed on his or her application, findings of fact supporting a revocation.

(2) Upon a finding of noncompliance, the Board shall notify the Police Chief of the City of their finding, and the Police Chief shall take the license into his or her custody and return the same to the City Clerk.

(1989 Code, § 9-11) (Ord. passed 7-24-1972; Ord. 01-05, passed 6-11-2001)

SECTION 112.20 FEES

A fee as set forth in the City Fee Schedule shall accompany every application for license under this chapter at the time of filing of the same. This fee shall be paid into the general fund of the City, and may be used by the Board of Commissioners of the City to defray the cost of investigation and action upon the application and shall not be returnable to the applicant, regardless of favorable or unfavorable action by the Board.

(1989 Code, § 9-12) (Ord. passed 7-24-1972; Ord. 01-05, passed 6-11-2001)

LICENSES; MESSAGE PRACTITIONERS

SECTION 112.35 REQUIRED

Any person desiring to engage in the business, trade, or profession of massage practitioner shall, before engaging in the business, trade, or profession, obtain a massage practitioner's license from the City Clerk of the City.

(1989 Code, § 9-13) (Ord. passed 7-24-1972; Ord. 01-05, passed 6-11-2001) Penalty, see § 10.99

SECTION 112.36 APPLICATIONS

(A) *Filing.* Every applicant for a massage practitioner's license shall file an application therefor addressed to the City Clerk of the City.

(B) *Contents.* The application shall be in writing, shall be signed by the applicant, with his or her signature duly notarized, and shall set forth the following:

- (1) The name of the applicant;
- (2) The date of birth of the applicant;
- (3) The date of the application;
- (4) All aliases and former names used by the applicant within five years immediately preceding the date of the application;
- (5) The present address of the residence of the applicant;
- (6) Any and all addresses of residence of the applicant within the five-year period immediately preceding the date of the application;
- (7) A list of any and all convictions for violations of the laws of any municipality, state, territory, or possession of the United States of America or of the United States of America, other than minor traffic offenses, including the dates of the convictions, and a statement as to each conviction of the final disposition of the same and the length of time actually served by the applicant as a result of the conviction;
- (8) A list of any and all charges presently pending against the applicant for the violation of the laws of any municipality, state, territory, or possession of the United States of America or of the United States of America, other than minor traffic offenses;

(9) A health certificate of a medical doctor duly qualified and licensed to practice medicine within the state, which health certificate shall be attached to the application as exhibit A;

(10) All other information, if any, which the applicant may desire to attach to his or her application attesting to his or her good moral character;

(11) A statement by the applicant that he or she has read the information contained in his or her application and that the same is true and complete to the best of his or her knowledge and information;

(12) An original printout of the applicant's criminal history from the Craven County Clerk of Court made within fifteen (15) days of the date of the application; and

(13) A copy of a current license issued by the North Carolina Board of Massage and Bodywork Therapy pursuant to the North Carolina Massage and Bodywork Therapy Practice Act.

(1989 Code, § 9-14) (Ord. passed 7-24-1972; Ord. 98-08, passed 6-22-1998; Ord. 99-04, passed 3-22-1999; Ord. 01-05, passed 6-11-2001)

SECTION 112.37 TERM; RENEWAL; DISPLAY

Massage practitioner's licenses issued pursuant to this subchapter shall be effective for one year from the date of issue and, provided that the license has not been revoked and the applicant submits an application to the City Clerk pursuant to § 112.36 (although the applicant shall not be required to re-submit the materials described in § 112.36(B)(9) and (B)(12)) which application is unchanged from the immediately previous year (including the contents of any criminal record check except for minor traffic offenses), the massage practitioner's license may be renewed annually by the City Clerk upon proof of payment of the privilege license tax pursuant to § 110.12 for the period of renewal; otherwise, the massage practitioner's license may be renewed only by submission of a new application pursuant to §§ 112.35 and 112.36 and approval of the application by the City Clerk in accordance with this chapter and payment of the privilege license tax pursuant to § 110.12. An applicant is required to submit information required at the time of renewal even if the information was not required at the time of the original application. Each license shall be issued subject to the condition that the massage practitioner display his or her license in a conspicuous place within view of any person receiving manual or mechanical massage or similar treatment under this chapter; provided, that if the licensed massage practitioner be an employee of a regulated facility duly licensed under this chapter, his or her license shall be displayed in a conspicuous place on the premises of the regulated facility.

(1989 Code, § 9-15) (Ord. passed 7-24-1972; Ord. 98-08, passed 6-22-1998; Ord. 01-05, passed 6-11-2001)

LICENSES; REGULATED FACILITIES

SECTION 112.50 REQUIRED; TO BE VALID FOR APPLICATION ONLY

Any person desiring to engage in the ownership or operation of any licensed facility within the meaning of this chapter, any facility regulated under this chapter, or subject to regulation under this chapter, shall, before engaging in the ownership or operation, obtain a regulated facility license from the City Clerk of the City, which license shall be issued in the name of the regulated facility and shall be valid only so long as the facility remains in the ownership or operation of the applicant.

(1989 Code, § 9-16) (Ord. passed 7-24-1972; Ord. passed 7-28-1975; Ord. 01-05, passed 6-11-2001) Penalty, see § 10.99

SECTION 112.51 APPLICATIONS

(A) *Filing.* Every applicant for a regulated facility license shall file an application therefor, addressed to the City Clerk of the City.

(B) *Contents.* The application shall be in writing, shall be signed by the applicant, with his or her signature duly notarized, and shall set forth the following:

- (1) The name of the applicant;
- (2) The date of birth of the applicant;
- (3) The date of the application;
- (4) All aliases and former names used by the applicant within five years immediately preceding the date of the application;
- (5) The present address of the residence of the applicant;
- (6) Any and all addresses of residence of the applicant within the five-year period immediately preceding the date of the application;
- (7) A list of any and all convictions for violations of the laws of any municipality, state, territory, or possession of the United States of America or of the United States of America, other than minor traffic offenses, including the dates of the convictions, and a statement as to each conviction of the final disposition of the same and the length of time actually served by the applicant as a result of the conviction;
- (8) A list of any and all charges presently pending against the applicant for the violation of the laws of any municipality, state, territory, or possession of the United States of America or of the United States of America, other than minor traffic offenses;
- (9) The address of the facility proposed to be licensed;
- (10) Each application submitted under the provisions of this chapter shall be accompanied by the following:
 - (a) A photograph of applicant or applicants taken within thirty (30) days of the date of application; and
 - (b) The original full set of fingerprints of applicant or applicants, the fingerprints to be taken by the Havelock Police Department, Craven County Sheriff's Department, or other law enforcement agency at or by the time application is submitted. The fingerprints may be sent to the State Bureau of Investigation, Federal Bureau of Investigation, or other appropriate law enforcement agency.
- (11) All other information, if any, which the applicant may desire to attach to his or her application attesting to his or her good moral character;
- (12) A statement by the applicant that he or she has read the information contained in his or her application and that the same is true and complete to the best of his or her knowledge and information; and
- (13) An original printout of the applicant's criminal history from the Craven County Clerk of Court made within fifteen (15) days of the date of the application.

(1989 Code, § 9-17) (Ord. passed 7-24-1972; Ord. passed 7-28-1975; Ord. 98-08, passed 6-22-1998; Ord. 01-05, passed 6-11-2001)

SECTION 112.52 TERM; RENEWAL; DISPLAY

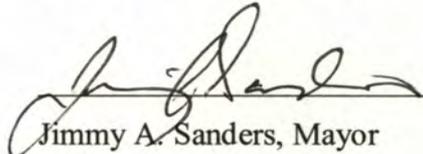
Regulated facility licenses issued pursuant to this subchapter shall be effective for one year from the date of issue and, provided that the license has not been revoked and the applicant submits an application to the City Clerk pursuant to § 112.51 (although the applicant shall not be required to re-submit the materials described in § 112.51(B)(10) and (B)(13)) which application is unchanged from the immediately previous year (including the contents of any criminal record check except for minor traffic offenses), the regulated facility license may be renewed annually by the City Clerk upon proof of payment of the privilege license tax pursuant to § 110.12 for the period of renewal; otherwise, the regulated facility license may be renewed only by submission of a new application pursuant to §§ 112.50 and 112.51 (although the applicant shall not be required to re-submit the materials described in § 112.51(B)(10)) and approval of the application by the City Clerk in accordance with this chapter and payment of the privilege license tax pursuant to § 110.12. An applicant is required to submit information required at the time of renewal even if the information was not required at the time of the original application. Each license shall be issued subject to the conditions that the license be displayed in a conspicuous place on the premises of the regulated facility and that the business be carried on only in the building designated in the license.

(1989 Code, § 9-18) (Ord. passed 7-24-1972; Ord. 98-08, passed 6-22-1998; Ord. 01-05, passed 6-11-2001)

This ordinance shall take effect at 12:01 a.m. on March 29, 2011.

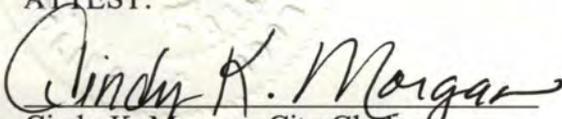
Adopted this the 28th day of March, 2011.

CITY OF HAVELOCK



Jimmy A. Sanders, Mayor

ATTEST:



Cindy K. Morgan, City Clerk