AJC

ORDINANCE NO. 2007-219

AN ORDINANCE OF THE TOWN OF WINDSOR AMENDING THE MUNICIPAL CODE BY ADDING CHAPTER 22 TO TITLE III TO PROVIDE FOR THE ORDERLY REGULATION OF MASSAGE ESTABLISHMENTS

WHEREAS, the Town of Windsor is a residential community; and

WHEREAS, the Town has experienced an increase in the number of massage establishments operating within its jurisdiction; and

WHEREAS, Title XVII of the Code of the Town of Windsor requires massage parlors to obtain a minor use permit before operating; and

WHEREAS, the Town Council has determined that the development criteria alone for massage parlors, set forth in the Code, do not adequately protect the health, safety, and general welfare of the citizens of the Town; and

WHEREAS, in order to protect the public health, safety and welfare, the Town desires to impose regulations on the operation of massage establishments including location, hours of operation, security, health protection, aesthetics, maintenance.

NOW, THEREFORE, the Town Council of the Town of Windsor does ordain as follows:

Section 1. Chapter 22 entitled "Massage Establishments" is hereby added to Title III of the Windsor Town Code to read as follows:

"**3-22-100 Purpose.** In enacting these regulations the Town Council recognizes that massage is a viable professional field offering the public valuable health and therapeutic services. It is the purpose and intent of the Town Council to provide for the orderly regulation of massage establishments, massage practitioners, managing employees and persons offering massage in the interest of public health, safety, and welfare. It is the intent of this Chapter to enact regulations to ensure that those offering massage services are qualified and trained and can be expected to conduct their work in a lawful and professional manner. The Town Council finds that existing controls have not satisfactorily discouraged the use of the profession for objectionable and illegal purposes.

3-22-105 Definitions. For the purposes of this Chapter, unless otherwise apparent from the context, certain words and phrases used in this Chapter are defined as follows:

a. *Massage* or *Massage Therapy* means the treatment of superficial parts of the human body by rubbing, pressing, stroking, kneading, tapping, pounding, bathing, vibrating, manipulating or stimulating with the hand(s) or any instrument, for an economic consideration. *Massage* or *Massage Therapy* also means the skillful application of touch to enhance health and well being.

b. *Massage Practitioner* means any person who massages; but it does not include any person licensed under Business and Professions Code Section 2000 et seq. (medicine), 2630 or 2639 (physical therapy), 2732.1, 2733 or 2742 (nursing), or under 1000 et seq (Chiropractic).

c. *Massage Establishment* means any premises where massage is given, either as a primary or secondary function.

d. *Outcall Massage Service* means massage given other than in a Massage Establishment.

e. *Employee* means any person working for the permittee of a massage establishment or outcall massage service.

f. *Operate* and *Operator* refers to operating, conducting, maintaining or allowing a massage establishment or outcall massage service, or employing a massage practitioner to serve others.

g. *Permit Administrator* means the Town employee designated by the Town Manager to oversee the implementation and enforcement of this Chapter.

3-22-110 Permit Required.

a. Massage practitioner's permit. No person shall operate or allow the operation of a massage establishment or an outcall massage service without a valid permit.

b. Massage practitioners. No person shall act as a massage practitioner, nor shall anyone employ a person as a massage practitioner for others, who does not have a valid massage practitioner permit. Every operator shall maintain a register of all persons so employed and their permit numbers, which register shall be available for inspection by the Permit Administrator during regular business hours.

3-22-115 Applications.

a. Application and Fees. Every person wishing to operate a massage establishment or outcall massage service, or act as a massage practitioner, shall file a verified written application with the permit administrator, or his/her designee, on a form provided by the Town. The Town Council may establish by resolution a fee to cover the reasonable costs related to processing of applications.

b. Contents of Application. Every application shall include the following minimum information. The Permit Administrator may require additional information necessary to insure compliance with this Chapter.

c. Every application shall include the applicant's personal and business names, addresses and telephone numbers. If the applicant is an individual, he/she shall also include the previous residence and business addresses for the past five years. If the applicant is not an individual but is instead a business entity, the non-individual's application shall state its legal capacity (corporation, partnership, and the like) and shall include the names and addresses of all officers, directors, shareholders, general and limited partners and financially interested persons.

c. Every application shall include the individual applicant's sex, birth date (which must be at least eighteen years before the date of application submittal), height, weight, color of hair and eyes, social security and driver's license numbers (if any), and two recent portrait photographs, and the same for all principal officers of non-individual applicants.

d. The application shall state the individual applicant's experience in massage and related work, and his/her business, occupation or employment for the period of five years before application, and the same for all principal officers of non-individual applicants.

e. If the applicant or its principal officers have ever had a license or permit for a business, trade, occupation, profession or employment suspended, revoked or denied, the application shall state the circumstances thereof and reasons therefore.

f. The application shall state the circumstances and final disposition of every arrest, prosecution or conviction of the applicant or its principal officers.

g. The applicant shall state under penalty of perjury that he/she is free from communicable diseases or other conditions which could interfere with his/her ability to engage in the practice of massage in a safe and healthful manner.

h. Operator's additional contents. Every application for an operator's permit shall also state the exact nature(s) of the massage(s) to be administered, and the location(s) thereof and facilities therefore.

i. Educational requirements. Every applicant shall state under penalty of perjury that:

1. He/she is a graduate from a public institution or school whose purpose is to teach the theory, method, profession and work of massage, and

which requires a minimum of seventy hours of actual class attendance or instruction, and shall list the name of said institution or school; or

2. He/she has completed a minimum of five hundred hours of actual class attendance or instruction in the theory, method, profession and work of massage from public institutions or schools, and shall list the name of said institution or schools; or

3. He/she has performed at least two years of actual, bona fide, legal, full-time experience as a Massage Practitioner, or its equivalent, and shall list the location where said experienced occurred; or

4. He/she has completed a bona fide course culminating in the issuance of a nationally recognized certified massage therapist certificate.

j. Updating Application. Every applicant and permittee shall report to the Permit Administrator, within twenty days, any changes in the information required in connection with the application, and any changes of circumstances which might result in noncompliance with this Chapter or any applicable law, ordinance or regulation relating to health, safety or welfare, and any changes in employees working in a massage establishment or for an outcall massage service. Failure to comply with this section may be grounds for suspension or revocation of a permit as set forth herein.

3-22-120 Processing of Applications.

a. Upon receipt of a satisfactorily completed application and any required fee, the Permit Administrator shall process the application.

b. The Permit Administrator shall determine whether all information required by this Chapter has been submitted. The Permit Administrator may request an investigation by the Police Department, Code Enforcement Officer, Fire Marshall, Health Official, or other officials as deemed reasonably necessary in order to verify any information submitted, including the truthfulness and completeness of the submitted information, as well as full compliance with this Chapter and with all other applicable laws, ordinances and regulations relating to health, safety and welfare.

3-22-125 Permits.

a. Issuance of Permit. Within sixty (60) days after an application is filed, and upon payment of a nonrefundable permit fee as established by resolution of the Town Council, the Permit Administrator shall issue a permit, unless he/she finds any of the following:

1. The applicant or any employee has been convicted of an offense requiring registration under Penal Code Section 290 or defined in Sections 311 through 312.7, 314, 315, 316, 318, 647(a), (b), (d) or 647a, or an offense involving the use of force and violence upon the person of another or lewd conduct; or

2. The building, structure, equipment or location used by the proposed operation fails to comply with all applicable building, fire, electrical, plumbing, health and zoning requirements of the Town, as set forth in Title 17 of the Code of the Town of Windsor, in particular those regulations relating to the operation of "personal services, restricted" in the Commercial Zoning Districts (*see* Chapter 27.10.030 and Chapter 27.42.050), all applicable State, and federal requirements of a similar nature that are customarily enforced by the Town, and all provisions of these regulations and this code relating to the operation of a massage establishment; or

3. The applicant, knowingly and with the intent to deceive, has made any false, misleading or fraudulent statement or representation, or material omission, in connection with the application process.

b. Denial of Permit. If the Permit administrator finds any of the conditions listed in subsection (A) to exist, he/she shall deny issuance of a permit. The Permit Administrator shall notify the applicant of his/her decision by depositing written notice of such decision in the first-class U.S. mail, postage prepaid, addressed to the applicant, not later than ten days following the date of such decision. A notice of denial of an application must contain a statement of the facts upon which the denial is based and must contain a statement of the appeal procedure contained in this Chapter.

c. Conditions of Permit. Original and renewal permits shall be serially numbered, nontransferable and valid for one year from issuance, unless earlier suspended or revoked. Unless suspended or revoked earlier, all permits automatically expire one year from the date of issuance.

d. Renewal of Permits. Applications for renewal of permits shall be submitted to the Permit Administrator at least thirty days prior to expiration, including any fee as set by resolution of the Town Council, but shall otherwise be handled like original applications, the fee for the renewed permit being the same as for the original.

3-22-130 Additional Regulations. The Town Manager may make and enforce such reasonable rules and regulations as may be necessary and proper to carry out the intent and purposes of this Chapter.

3-22-135 Display of Permits. Every massage establishment shall display its permit and those of its massage practitioner employees in a conspicuous place on the premises.

Every massage practitioner permittee, while working, shall wear conspicuously on his/her person a badge containing his/her name, a recent photograph and permit number, to be supplied by the Permit Administrator. Every outcall massage service shall have its permit available for inspection during regular business hours. Every outcall massage practitioner shall have a copy of his or her permit available for inspection when performing services.

3-22-140 Massage Establishment Requirements.

a. Every portion of a massage establishment and all equipment shall be maintained in a clean and sanitary condition. Floors shall be kept free from dust, dirt, refuse and vermin. Walls, ceilings and equipment shall be of such construction as to be easily cleaned and shall be kept clean and in good repair.

b. All the electrical, plumbing, heating and ventilation systems in a massage establishment shall be maintained in accordance with all applicable laws, ordinances and regulations.

c. All towels, sheets and linens used by massage practitioners or customers shall be clean and freshly laundered and shall not be reused unless properly laundered and sterilized. Soiled towels, linen, sheets and garments shall be kept in containers provided for this purpose.

d. Massage establishments shall provide toilet facilities. All toilets, lavatory facilities and changing rooms shall be maintained in a clean and sanitary condition. Hand washing facilities in good repair with hot and cold running water, along with hand washing detergent or soap and sanitary towels in permanent dispensers, shall be provided in either the toilet room or vestibule thereof. All employees must wash their hands after using the toilet facilities. Legible signs to this effect shall be posted in each toilet facility.

e. All employees shall be clean and wear clean outer garments.

f. All portions of massage establishments shall be provided with adequate light and ventilation by means of windows or skylights, or shall be provided with artificial light and a mechanical ventilating system.

3-22-145 Nude and Topless Exposure Prohibited. No massage practitioner or employee of either sex, in the presence or view of any customer, shall expose his/her private parts, genitalia, buttocks, or (in the case of a female) any portion of either breast below a straight line drawn above both nipples and the surrounding differently pigmented areas (areola papillaris).

3-22-150 Inspection. The Permit Administrator, or other designated official, may make or cause to be made inspections of any massage establishment or outcall massage service during regular business hours, to determine whether there is compliance with the provisions of this Chapter.

3-22-155 Suspension or Revocation. If the Permit Administrator finds that any permittee under this Chapter has violated any provision of this Chapter, the Permit Administrator may suspend or revoke the permit. The decision to suspend or revoke shall be based on the severity of the violation. The Permit Administrator shall notify the permittee of his/her decision by depositing written notice of such decision in the first-class U.S. mail, postage prepaid, addressed to the applicant, not later than ten days following the date of such decision. The written decision must contain a statement of the facts upon which the decision is based and must contain a statement of the appeal procedure contained in this Chapter. A suspension of a permit may be for a reasonable period of time to allow for the correction of any violation, but in no event shall a suspension be for longer than one year. During the suspension, the permittee shall be prohibited from engaging in the activities regulated by this Chapter within the Town. Any permittee whose permit is revoked shall be prohibited from engaging in the activities regulated by this Chapter within the Town for a period of two years. After the term of a suspension or revocation, the Permit Administrator may require the filing of a new application subject to the procedures of this Chapter.

3-22-160 Right of Appeal. Any applicant for a permit or a permittee shall have the right to appeal a decision by the permit authority to deny a permit application or renewal application, or to approve such an application with conditions, or to suspend or revoke a permit, by filing with the Town Clerk a written notice of appeal, specifying the grounds for such appeal, within fifteen (15) days after the decision has been served on the applicant or permittee. Such appeal shall be heard by the Town Manager or by an Administrative Hearing Officer designated by or at the request of the Town Manager, upon not less than fifteen (15) days written notice to the appellant. The Town Council may establish by resolution a fee to cover the reasonable costs related to the appeal hearing. The Town Manager or the designated Administrative Hearing Officer shall consider all relevant evidence at the hearing, continue the hearing for good cause, and require such legal briefing as may be required to address any issues raised by the appeal. Within a reasonable time, but not more than thirty (30) days following the conclusion of the hearing, the Town Manager or the designated Administrative Hearing Officer shall issue a written decision affirming, denying or modifying the decision from the appeal, supported by factual findings and determinations referenced by supporting evidence. The decision of the Town Manager or designated Administrative Hearing Officer shall be final. The written decision shall be served on the appellant as provided in the California Code of Civil Procedure Section 1094.6(b), with a copy submitted to the Town Clerk. The written decision shall include a notice to the appellant that the decision is subject to judicial review according to the provisions and time limits set forth in the California Code of Civil Procedure Section 1094.6.

3-22-165 Exemptions. This Chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

a. Physicians, surgeons, chiropractors, osteopaths, physical therapists, nurses, or to any other person licensed to practice any healing art under provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of his or her license;
b. Trainers of any amateur, semiprofessional, or professional athlete or athletic team;
c. Barbers, estheticians and cosmetologists who are duly licensed under the laws of the state of California, while engaging in practices within the scope of their license;
d. Individuals in the Town temporarily for educational events or disaster relief;
e. Individuals administering massages or health treatments involving massage to persons participating in road races, track meets, triathlons, educational events, conferences or similar single-occurrence athletic, recreational or educational events;
f. Somatic practitioners who use no physical touch of any kind at any time in their practice.

3-22-170 Violation and Penalties. Any violation of this Chapter may be enforced by any remedy available to the Town under this code.

Section 2. California Environmental Quality Act ("CEQA")

The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, either directly or indirectly.

Section 3. Statutory Severability.

If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions may be declared unconstitutional, unlawful or otherwise invalid.

Section 4. Effective Date and Publication.

This ordinance shall take effect thirty (30) days from its passage. In accordance with California Government Code Section 36933(c), a summary of this ordinance and a certified copy of the full text of this ordinance was posted at least five (5) days prior to the Council's adopting of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the Town Council shall publish a summary of the ordinance with the names of those Town Council members voting for and against the ordinance in the *Windsor Times*. A certified copy

of the full text of the Ordinance will be posted in the office of the Town Clerk within fifteen (15) days of its adoption.

PASSED, APPROVED AND ADOPTED this 18th day of July 2007 by the following vote:

AYES:	**COUNCILMEMBERS FUDGE, GOBLE, SALMON AND MAYOR PARKER**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**COUNCILMEMBER ALLEN**

WARIN J. PARKER, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK