

CHAPTER 22. HEALTH CLUBS

Sec. 5-22.01. Intent and purpose.

The purpose of this section is to provide consumers of health club services with an effective and expedient method of obtaining refunds when their health club is closed and the business fails to provide prompt and equitable refunds. Nothing in this chapter is intended to affect or to be inconsistent with the requirements and provisions of Civil Code Section 1812.80, et seq.

(§ 1, Ord. 1110-NS, eff. July 18, 1991)

Sec. 5-22.02. Definitions.

For the purposes of this chapter, the following words or phrases shall have the following meanings:

(a) "Bond" shall mean a surety bond or financial guaranty bond in a form, and from a company approved by the City Attorney, for the benefit of the City of Thousand Oaks, assuring refunds to consumers whose health club closes and which club fails to provide refunds within thirty (30) days of such closure.

(b) "Cash deposit" shall mean either (1) cash deposited with the City or (2) a certificate of deposit or savings account with a California financial institution wherein the City is named holder of the account as trustee for refunds to consumers; and (3) the City's signature will be required prior to release of any funds.

(c) "Health club" shall mean any corporation or business which offers or provides to the public, on a membership basis, services, facilities, instruction, training, or assistance in body building, exercising, reducing, figure development, aerobics, or any other similar physical activity.

(d) "Health club contract" shall mean a contract in the form and manner prescribed by California Civil Code Section 1812.80, et seq., between a health club and consumer for health club services.

(e) "Health club closure" shall mean the discontinuation of health club services pursuant to the terms and at the location specified in the health club contract for more than fourteen (14) days. This shall not include temporary closures for a period of up to sixty (60) days, or a longer period approved by the City, in order to make repairs or alterations to existing facilities.

(f) "Refund" shall mean an amount equal to the prorated value of the remaining time on a health club contract at the time of a health club closure. Processing fees, if any, shall be included.

(§ 1, Ord. 1110-NS, eff. July 18, 1991)

Sec. 5-22.03. Bond or letter of credit requirements.

Annually, on the first day of February, each year, every health club shall provide to the City's Finance Department, the below described cash deposit, surety bond, letter of credit, or proof of exemption under Section 5-22.04. No certificate of occupancy shall be issued or be renewed for a health club, and no health club shall operate, do business, or sell memberships unless exempt under Section 5-22.04, or the applicant first provides the City with evidence of a cash deposit, surety bond, or letter of credit, meeting all of the following requirements:

(a) The cash deposit, bond, or letter of credit is in the amount of Seventy-five Thousand and no/100ths (\$75,000.00) Dollars or five (5%) percent of the health club's previous fiscal year's gross, whichever is greater;

(b) The deposit, bond, or irrevocable letter of credit shall be called upon or be enforceable upon the failure of the health club to provide to the City proof that full refunds of prepaid dues or fees to all customers of that club have been made within thirty (30) days of the date of the health club closure;

(c) The cash deposit, bond, or letter of credit shall provide for payment of administrative costs to the City of Thousand Oaks in an amount equal to ten (10%) percent of the total monies called upon for City processing any refund to health club consumers.

(§ 1, Ord. 1110-NS, eff. July 18, 1991)

Sec. 5-22.04. Cash deposit, bond, or letter of credit exemption.

A cash deposit, bond, or letter of credit shall not be required if the City determines upon written request and assurances, under penalty of perjury, that the health club is eligible for an exemption based upon any one of the following criteria:

(a) The health club is a nonprofit organization eligible for a tax exemption pursuant to California Revenue and Taxation Code Section 23701d;

(b) The health club does not and will not allow prepayment of more than one month's service fee or membership charge and charges all members or consumers on a monthly fee basis only. However, a one-time charge as an initiation fee in an amount no greater than three (3) times the amount of the monthly fee may be charged;

(c) The health club has (1) been in the business of providing health club services continuously during the three (3) year period immediately prior to that date; (2) unsecured and unencumbered assets in excess of Five Hundred Thousand and no/100ths (\$500,000.00) Dollars; and (3) warranted and obligated to the City, on a form approved by the City Attorney:

(i) That any subsequent sale of the business; or

(ii) Any transfer (or sale) of the equipment to a new tenant or owner of the building used by the health club, which equipment is left in place, shall be conditioned upon the health club either providing membership prepayment fee refunds to the consumers, or requiring the successor of such business or transferred assets to honor, in full, the terms and conditions of all existing health club contracts.

An applicant qualifying for an exemption pursuant to this subsection shall annually file, concurrent with its business license renewal, a statement certifying that the applicant continues to maintain unsecured and unencumbered assets in excess of Five Hundred Thousand and no/100ths (\$500,000.00) Dollars, or a cash deposit.

(d) The health club (1) has provided health club services within the City continuously during the three (3) year period immediately prior to that date; (2) at all times will offer the option of paying a membership fee on a monthly basis with a one-time initiation fee in an amount no greater than three (3) times that monthly fee; (3) shall, for any prepaid membership in excess of one month, obtain a signed acknowledgment of the member as to the risks of early closure of the health club and the possible refund benefits from other health club providers as required under this ordinance; and (4) is obligated and warrants to the City, on a form approved by the City Attorney:

(i) That any subsequent sale of the business; or

(ii) Any transfer (or sale) of the equipment to a new tenant or owner of the building used by the health club, which equipment is left in place, shall be conditioned upon the health club either providing membership prepayment fee refunds to the consumers, or requiring the successor of such business or transferred assets to honor in full the terms and conditions of all existing health club contracts.

(§ 1, Ord. 1110-NS, eff. July 18, 1991, as amended by part 16, Ord. 1437-NS, eff. July 7, 2005)

Sec. 5-22.05. Refund obligation: Cash deposit, bond or letter of credit enforcement stayed.

The operator shall provide refunds to consumers in an amount equal to the prorated value of the remaining time on the consumer's health club contract at the time of a health club closure, including processing fees, if any. The operator of a health club shall be afforded a period of thirty (30) days from the date of a health club closure to provide refunds to affected consumers prior to the City taking action to enforce the refund provisions established by Sections 5-22.03 and 5-22.04 of this chapter.

(§ 1, Ord. 1110-NS, eff. July 18, 1991)

Sec. 5-22.06. Administration of refunds.

Upon the City's receipt of funds from the cash deposit, bond, letter of credit, or other secured interest, the City shall provide refunds to the extent such refunds are made possible given the amount of the proceeds from the deposit, the bond, or other security, and the amount of refunds claimed by consumers. The administration of consumer refunds shall be the responsibility of the City, which shall:

(a) Establish a health club refund account for the deposit of all proceeds from the cash deposit, bond, letter of credit, or secured interest into such account;

(b) Receive and review claims for consumer refunds;

(c) Determine the validity of and appropriate amount for each consumer refund; and

(d) Deduct the cash deposit, bond, or secured interest, as administrative cost, an amount equal to ten (10%) percent of the amount of refunds provided to consumers.

(§ 1, Ord. 1110-NS, eff. July 18, 1991)

Sec. 5-22.07. Deadline for refund claims.

Unless good cause is shown, no claim for a refund shall be accepted by the City after six (6) months from the date of the health club closure. Nothing in this section shall affect the rights of consumers to alternatively pursue civil remedies which may otherwise be available under State or Federal law.

(§ 1, Ord. 1110-NS, eff. July 18, 1991)

Sec. 5-22.08. Term of health club contract.

No health club operating in the City of Thousand Oaks shall contract to provide health club services for a period of time beyond which the health club has an ownership or leasehold interest to operate such health club.

(§ 1, Ord. 1110-NS, eff. July 18, 1991)

Sec. 5-22.09. Disclosure statement.

All health club contracts entered into in the City of Thousand Oaks shall have prominently displayed in bold type upon such contract, the following disclosure:

NOTICE TO CONSUMERS: In the event of a health club closure, you may have additional protection afforded by local law beyond those provided to you under state law. For more information, contact the City of Thousand Oaks.

(§ 1, Ord. 1110-NS, eff. July 18, 1991)

Sec. 5-22.10. Phase in of compliance for bond, letter of credit, or cash deposit requirements.

Any health club operating and open for business within Thousand Oaks on July 18, 1991 shall have complied with subsection (d)(1) of Section 5-22.04 by July 18, 1994, however, all such clubs shall comply with the requirements of subsections (d), (2)–(4). Any club opening after July 18, 1991 shall fully comply with all sections and subsections of this chapter.

(§ 1, Ord. 1110-NS, eff. July 18, 1991)