

AN ORDINANCE TO AMEND THE CODE OF THE COUNTY OF CHESTERFIELD,
1997, AS AMENDED, BY AMENDING SECTIONS 15-91 THROUGH 15-101 AND
ENACTING SECTIONS 15-102 THROUGH 15-106 RELATING TO REGULATIONS FOR
MASSAGE CLINICS AND LICENSED MASSAGE THERAPISTS

BE IT ORDAINED by the Board of Supervisors of Chesterfield County:

(1) *That Sections 15-91 through 15-101 are amended and Sections 15-102 through 15-106 of the Code of the County of Chesterfield, 1997, as amended, are enacted to read as follows:*

CHAPTER 15

REGULATED OCCUPATIONS AND SERVICES

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ARTICLE V. ADMINISTRATION OF MASSAGE FOR CONSIDERATION

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Sec. 15-91. - Definitions.

For this article, the following words and phrases shall have the following meanings:

Barber shop means an establishment which provides one or more of the following services in exchange for consideration: hair care, makeovers, facials, manicures, pedicures, or body waxing.

Beauty salon means an establishment which provides one or more of the following services in exchange for consideration: hair care, skin care, makeovers, facials, manicures, pedicures or body waxing.

Care facility means a hospital, nursing home, convalescent care facility, assisted living facility, life care facility, or group care facility.

Chief of police means the Chesterfield County Police Chief or his designee.

Client means a person receiving a massage.

Consideration means anything of value given in exchange for services rendered, including, but not limited to, money, goods, services or advertising.

Health club means an establishment which provides health and fitness equipment and programs for its client's use in exchange for any form of consideration. A health club may be located in a hotel or motel but not in a guest room in a hotel or motel.

Licensed massage therapist means any person who administers a massage to a client in exchange for consideration, and who has qualified as a licensed massage therapist pursuant to the requirements of Code of Virginia, §§ 54.1-3000 and 54.1-3029, as amended.

Massage means the treatment of soft tissues for therapeutic purposes by the application of massage and body work techniques based on the manipulation or application of pressure to the

muscular structure or soft tissues of the human body. Massage shall not include the diagnosis or treatment of illness or disease or a service or procedure for which a license to practice medicine, nursing, midwifery, chiropractic therapy, physical therapy, occupational therapy, acupuncture, athletic training or podiatry is required by law. Massage shall not include manipulation of the spine or joints or any service by which an individual provides stroking of the hands, feet, or ears or the use of touch, words, and directed movement, including healing touch, therapeutic touch, mind-body centering, orthobionomy, traeger therapy, reflexology, polarity therapy, reiki, gigong, muscle activation techniques, or practices with the primary purpose of affecting energy systems of the human body. Massage shall also not include placing hands on, touching, or fondling the sexual or genital parts of another or exposing one's sexual or genital parts to any other person, although this exclusion does not apply to a glute massage.

Massage clinic means a fixed place of business where a licensed massage therapist gives a client a massage. A massage clinic shall either be free-standing or located within a health club, tanning salon, hotel or motel (but not in a guest room in a hotel or motel), beauty salon, barbershop or within a public university, public college, or post-secondary school that is approved by the State Council of Higher Education for Virginia.

Massage clinic operator means the person who is responsible for the day-to-day operation of the clinic. The massage clinic operator need not qualify as a licensed massage therapist if he or she does not intend to administer massage.

Public gathering means any event occurring in the county that is open to the general public and involves more than 50 persons.

Seated massage means a massage of the upper body or feet when the client is fully clothed and seated in a chair.

Sexual or genital parts means the genitals, pubic area, buttocks or anus of any person and the breasts of a female person.

Tanning salon means an establishment which has as its primary business the provision of tanning services in exchange for consideration.

Sec. 15-92. Persons who may perform a massage for compensation.

No person shall administer or perform or permit to be administered or performed a massage in exchange for consideration in or upon any premises within the county unless:

- (a) The massage is performed for medical, relaxation, remedial or hygienic purposes; and
- (b) The person performing the massage is a licensed massage therapist and holds a valid county permit.
- (c) If a massage is performed in a massage clinic, a valid county massage clinic permit has been issued for the premises.

Sec. 15-93. - Exclusions to section 15-92.

Section 15-92 shall not apply to massages administered for medical, relaxation, remedial or hygienic purposes by:

- (a) A physician, surgeon, chiropractor, osteopath or physical therapist duly licensed by the Commonwealth of Virginia or any health care professional licensed or certified under Title 54.1 (Professions and Occupations) of the Code of Virginia for which massage therapy is a component of the person's practice;
- (b) A ~~licensed~~ registered nurse or licensed practical nurse acting under the prescription or direction of any such physician, surgeon, chiropractor, osteopath, or physical therapist;
- (c) A licensed massage therapist acting on the premises of any such physician, surgeon, chiropractor, osteopath or physical therapist and under his prescription or direction;
~~or~~
- (d) A student of massage therapy enrolled in a course of instruction for massage therapy at a public university, public college, or post-secondary school that is approved by the State Council of Higher Education for Virginia, provided also that the massage is performed as part of a course of instruction for massage therapy at a massage clinic and that a licensed massage therapist is present in the room at all times with the massage therapy student;
- ~~(e) In addition, section 15-92 shall not apply to Barber shops or beauty salons in which massage is given to the scalp, face, neck, ~~or~~ shoulders or feet only;~~
- (f) A massage therapist licensed or in good standing in another state, the District of Columbia or another country, while such massage therapist is volunteering at a sporting or recreational event or activity, is responding to a disaster or emergency declared by the appropriate authority, is travelling with an out-of-state athletic team or an athlete for the duration of the athletic tournament, game or event in which the team or athlete is competing, or is engaged in educational seminars; or
- (g) Any person providing services related to the domestic care of any family member or household member so long as that person does not offer, hold out, or claim to be a licensed massage therapist.

Sec. 15-94. - Permissible locations for massage.

A licensed massage therapist may give a massage in the county only at the following locations and under the following conditions:

- (1) At a permitted massage clinic;
- (2) At the regular place of business, not located in a residence, of the client during the

regular hours of such business; provided, that a licensed massage therapist may only give a seated massage at such location;

- (3) At a care facility;
- (4) At a public gathering, provided that a licensed massage therapist may only give a seated massage at such location;
- (5) Except as otherwise prohibited by this article, at a client's residence; and
- (6) At a licensed massage therapist's home provided that the therapist meets the requirements of a home occupation as set forth in chapter 19.1.

Sec. 15-95. – Therapist Register and display of certificate.

- (a) The massage clinic operator shall maintain at the massage clinic a register containing the name and date of employment of each licensed massage therapist employed at the massage clinic. Such register shall be made available for inspection by the police department and health department during normal hours of operation. The massage clinic operator shall also publicly display at the massage clinic the certificate issued by the chief of police.
- (b) Each licensed massage therapist shall post his or her current license issued by the state board of nursing in a public area at the massage clinic premises. If the licensed massage therapist is giving a massage at a location permitted by section 15-94 other than a massage clinic, the therapist shall have the current license, or a copy, in his or her possession at the location.

Sec. 15-96. - Individual health requirements.

- (a) No massage clinic operator or licensed massage therapist shall be permitted to give a massage or come in contact with a client unless the operator or licensed massage therapist shall be free of any contagious or communicable disease. The director of public health or his designee may, for cause, prohibit an operator or licensed massage therapist from giving a massage unless and until the person provides a certificate from a licensed physician that the person has been examined within the previous ten days and found to be free of all contagious or communicable diseases.
- (b) No massage clinic operator or licensed massage therapist shall knowingly serve any client infected with any fungus or other skin infection, nor shall a massage be performed on any client exhibiting skin inflammation or eruption, unless a licensed physician has certified that any such person may be safely served and has prescribed any necessary conditions on the service.

Sec. 15-97. - Necessary facilities for a massage clinic.

- (a) Each massage clinic shall have and maintain the following facilities or equipment in a clean, sanitary and remarkable condition:

- (1) Equipment for disinfecting and sterilizing non-disposable instruments and materials if used in performing massage.
- (2) Hot and cold water and soap, which shall be provided at all times.
- (3) Towels and linens for each of the clinic's clients or each client receiving massage services. Common use of towels or linens shall not be permitted.
- (4) A custodial service sink located in the building in which the massage clinic quarters are located.

(b) Each massage clinic operator shall maintain any walls, ceilings, floors, pools, showers, bathtubs, steam rooms and any other physical facilities for the clinic in good repair and in a clean and sanitary condition. Any heat, steam or vapor rooms or cabinets shall be cleaned each day the clinic is in operation. Bathtubs shall be thoroughly cleaned after each use.

(c) Massage tables, bathtubs, shower stalls and steam or bath areas shall have nonporous surfaces which may be readily disinfected.

Sec. 15-98. - Unlawful acts.

- (a) It shall be unlawful for a massage clinic operator or a licensed massage therapist to:
 - (1) Place hands upon, to touch with any part of the operator's or therapist's body, to fondle in any manner, or to massage a sexual or genital part of a client;
 - (2) Expose the operator's or therapist's sexual or genital parts or any portion thereof to a client;
 - (3) Expose the sexual or genital parts or any portion thereof of a client; or
 - (4) Fail to conceal with a fully opaque covering the sexual or genital parts of the operator's or therapist's body while in the presence of a client.
- (b) It shall be unlawful for a client to:
 - (1) Place hands upon, to touch with any part of the client's body, to fondle in any manner, or to massage a sexual or genital part of an operator or a therapist;
 - (2) Expose the client's sexual or genital parts or any portion thereof to an operator or therapist;
 - (3) Expose the sexual or genital parts or any portion thereof of an operator or therapist;
or
 - (4) Fail to conceal with a fully opaque covering the sexual or genital parts of the client's body while in the presence of an operator or a therapist.
- (c) It shall be unlawful for any person to:
 - (i) Solicit, command, entreat or otherwise attempt to persuade any person to commit any of the acts listed in this section,
 - (ii) Offer to commit any of the acts listed in this section, or
 - (iii) Agree to participate in any of the acts listed in this section.

Sec. 15-99. - Massage clinic operator and licensed massage therapist responsibilities.

The massage clinic operator shall be responsible for maintaining the premises in accordance with this article's requirements and for ensuring that all agents and employees comply with this article's requirements. No massage clinic operator shall allow on his premises any activity or behavior prohibited by the laws of the United States, the Commonwealth of Virginia, or this county, and no licensed massage therapist shall engage in any such behavior.

Sec. 15-100. – Hours of operation, inspection and enforcement.

- (a) No massage clinic shall be open for business during the hours of 10 p.m. through 6 a.m.
- (b) This article shall be enforced by the police department and the health department. Further, these departments may inspect those areas of each massage clinic which are open to the public for the purpose of determining compliance with this article. Inspections shall be made at reasonable times and in a reasonable manner.

Sec. 15-101. Permit application.

(a) No person shall operate a massage clinic or act as a licensed massage therapist in the county without having obtained a permit from the county. Permit applications shall be made to the chief of police, who shall investigate all permit applications. Applicants shall pay to the county treasurer \$100.00 for a massage clinic permit and \$30.00 for a licensed massage therapist permit, to cover the costs of investigation by the police, health, fire and other departments referenced in Section 15-102, as needed. The treasurer's receipt of payment shall accompany the permit application. All permits shall expire every three years on the anniversary date of the issuance of the original permit. Failure to file a renewal application at least 30 days prior to the expiration date of the permit shall be grounds for revoking or suspending the permit. A renewal application shall be completed and filed as required below. Renewal applicants shall pay \$50.00 for a massage clinic permit renewal and \$30.00 for a licensed massage therapist permit renewal to the county treasurer to cover the costs of investigation by the police, health, fire and other departments referenced in Section 15-102, as needed. The treasurer's receipt of payment shall accompany the renewal application. A permit application shall not be considered within 12 months of denial of a substantially similar permit request.

(b) The licensed massage therapist permit application (including a renewal application) must include, but is not limited to, the following:

- (1) the full name, age and present address of the applicant.
- (2) The applicant's social security number.
- (3) The applicant's addresses for the ten years immediately preceding the date of the application.
- (4) The applicant's height, weight, race, sex and eye and hair color.

(5) The applicant's portrait photograph, which gives a clear view of the applicant's face.

(6) The applicant's criminal convictions, other than traffic offenses, and the date and place of the applicant's conviction.

(7) Written proof that the applicant meets the requirements contained in Code of Virginia, §§ 54.1-3000 and 54.1-3029, for a licensed massage therapist.

(8) Written authorization for the county, its agents and employees to conduct a background investigation of the applicant, including fingerprints and personal descriptive information for the purpose of obtaining criminal history record information, the cost of which will be paid by the applicant in addition to the costs set forth in subsection (a) above. The fingerprints will be forwarded to Virginia State Police for processing through the Central Criminal Records Exchange to the Federal Bureau of Investigation as authorized by Code of Virginia, § 15.2-1503.1.

(9) Written declaration, dated and signed by the applicant, certifying that the information contained in the application is true and correct.

(c) The application for a massage clinic permit shall contain:

(1) The full legal name and any trade name of the applicant and the applicant's business address and telephone number.

(2) The applicant's social security or employer identification number.

(3) All criminal convictions, other than traffic offenses, of the applicant and, if applicable, the applicant's owners, officers, directors, partners and managers and the date and place of the conviction.

(4) Written authorization for the county, its agents and employees to conduct a background investigation, including a criminal records check, of the applicant and, if applicable, the applicant's owners, officers, directors, partners and managers and to investigate whether the information provided by the applicant is true.

(5) Written declaration, dated and signed by the applicant, certifying that the information contained in the application is true and correct.

(6) A description of the massage clinic, including the number and location of rooms to be used, the number and names of licensed massage therapists to be employed and the hours of operation.

(7) If applicable, a list of the applicant's owners, officers, directors, managers and partners, including the name, address and title of the person filing the application on the applicant's behalf.

(d) All massage clinics and licensed massage therapists doing business in the County at the time of [date of adoption of ordinance] shall apply for a permit within 60 days of [date of adoption of ordinance].

Sec. 15-102. Referral of application.

The chief of police shall refer permit applications, as needed, to the county departments charged with enforcing the business license, zoning, building, plumbing, utility, health, electric and fire prevention codes, and any other departments as needed, for their recommendations.

Sec. 15-103. Granting of permit and issuance of photo identification card.

Within 60 days of the date of the permit application, the chief of police shall issue the permit if he shall find all the following:

(a) Any massage clinic to be used or constructed meets all zoning, building, plumbing, utility, health, electric and fire prevention codes, as well as any other applicable laws, as reported by the applicable departments.

(b) The applicant complies with all requirements of this article.

(c) The applicant does not pose any threat to the community's health and safety. Any past felony, or any misdemeanor convictions of the applicant materially affecting the applicant's ability to conduct the permitted activity including a conviction pursuant to this article and a crime of moral turpitude, shall be considered in making this determination.

(d) The applicant is at least 18 years old and complies with the requirements of Code of Virginia, §§ 54.1-3000 and 54.1-3029.

(e) The applicant has not made any false, misleading or fraudulent statements in the permit application nor in any other related document required by the county.

Upon granting a permit, the chief of police shall issue a certificate to the massage clinic operator and photo identification card to the licensed massage therapist who shall carry the card at all times while employed as a licensed massage therapist and shall produce the card upon request by the police department and health department during their inspection of the massage clinic. The chief shall also issue a certificate which the licensed massage therapist shall publicly display while providing a massage.

Sec. 15-104. Revocation and suspension of permit.

The chief of police may revoke or suspend any permit upon the violation of this article. No permit shall be revoked until the chief of police holds a hearing to determine just cause for the revocation or suspension. At the hearing, the permittee shall be able to present evidence and argument against revocation or suspension. The permittee shall be provided with notice of the hearing by mail, at least five days prior to the hearing, to the address on the permit. Notice shall

include a written statement setting forth the grounds for revocation or suspension. After the hearing the chief of police shall determine whether a violation has occurred and if so whether the permit should be suspended or revoked. Upon finding a violation, the chief of police may suspend the permit for not more than 60 days or revoke the permit. The chief of police's decision shall be final.

Sec. 15-105. Transferability of permit.

If a massage clinic is sold or transferred to a new owner, the clinic's permit shall no longer be valid. Unless prior approval shall have been obtained from the chief of police, the enlargement or alteration of the massage clinic's business structure shall automatically revoke the permit.

Sec. 15-1046. Penalties.

Any person who violates this article shall, in addition to being subject to the provisions of any other applicable ordinance or statute, be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding \$1,000.00 or by confinement in jail for a period not exceeding one year, either or both. In addition, the county attorney shall have the authority to bring civil legal action, including seeking an injunction, abatement or other appropriate measures, to ensure compliance with this article.

Secs. 15-102 107 to 15-120. Reserved.

(2) *That this ordinance shall become effective immediately upon adoption.*

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