

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 28TH DAY OF JULY, 1998, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. ROLL CALL**

Jack D. Edwards, Chairman, Berkeley District  
David L. Sisk, Vice Chairman, Roberts District

John J. McGlennon, Jamestown District  
Ronald A. Nervitt, Powhatan District  
M. Anderson Bradshaw, Stonehouse District  
Sanford B. Wanner, County Administrator  
Frank M. Morton, III, County Attorney

**B. PUBLIC COMMENT**

1. Ms. Jane McGaw, 2416 Sarah Spence, expressed dissatisfaction with the County's handling of the building code violations for her residence.

2. Mr. Donald Milkavich, 4707 Wood Violet Lane, emphasized that many citizens are unaware of County events that affect every day life. He asked for continuation of allowing citizens to speak openly at the comment periods.

3. Mr. Jack Kniest, 426 Airport Road, Chairman, Williamsburg Community Builders, spoke of the tax increase for one segment of community. Mr. Edwards advised Mr. Kniest that that subject should be addressed during the upcoming Public Hearing.

4. Mr. Keith Nowadly, 4702 Wood Violet Lane, voiced concern about the safety of traffic on Route 5 at Graylin Woods and Westray Downs. He asked for a review in detail of the Woodbury development traffic study.

5. Mr. Robert McGaw, 2416 Sarah Spence, read a letter sent to Mr. Leo Rogers, Assistant County Attorney, dated July 28, 1998, from Mr. Joseph R. Caprio, Attorney, regarding the reassessment of the McGaw residence.

**C. HIGHWAY MATTERS**

Mr. J. I. Hamrick, Williamsburg Assistant Resident Engineer, was available for questions.

Mr. Nervitt asked that the small signs installed at the curve near Williamsburg Montessori School on Longhill Road (Route 612) be replaced with larger signs or a flashing light.

Mr. McGlennon asked for a check of the poor quality of Sandy Bay Road between Ironbound Road (Route 615) and Jamestown Road (Route 5).

Mr. Nervitt asked for removal of the trash along Brick Bat Road (Route 613).

**D. CONSENT CALENDAR**

Mr. Edwards asked if a Board member wished to discuss the Consent Calendar item.

Mr. Edwards made a motion to approve the Consent Calendar.

On a roll call, the vote was: AYE: Sisk, McGlennon, Bradshaw, Nervitt, Edwards (5). NAY: (0).

**1. Subdivision Street Width Request - Governor's Land****RESOLUTION****REDUCED STREET WIDTHS - GOVERNOR'S LAND**

WHEREAS, the Board of Supervisors of James City County, Virginia, has received a request from Governor's Land Associates for support of their request to the Virginia Department of Transportation (VDOT) for reduced street widths; and

WHEREAS, Section 24 VAC-30-90-130 of the VDOT Subdivision Street Requirements requires a written request from the Board.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests VDOT to approve reduced street widths on certain roadways in Governor's Land.

BE IT FURTHER RESOLVED that the County will require off-street parking in Governor's Land and enforce "No Parking" requirements in conformance with Section 24 VAC-30-90-130 of the VDOT Subdivision Street Requirements.

**E. PUBLIC HEARINGS****1. Adoption of Budget Tax Rate - Route 5 Transportation Improvement District**

Mr. John E. McDonald, Manager of Financial and Management Services, gave a brief history of the Route 5 Transportation Improvement District (TID) and stated that the proposed increase was from one to ten cents per \$100 of assessed real property, effective July 1, 1998, in the real estate tax rate for those property owners in the TID. He further stated that the increase would provide for the Virginia Department of Transportation requirement to award a construction contract in July 1999.

Staff recommended approval of the resolution.

Mr. Sisk asked why the increase was being added now.

Staff responded that the funds were needed to award construction contract in July 1999; that the TID had a legal requirement of taxing only for construction of the Alternate Route 5 roadway; and once that debt was retired, the tax in the TID would revert to the tax rate paid by all County residents.

Mr. Edwards opened the public hearing.

1. Ms. Mary Ann Maimone, 108 Oak Ridge, Powhatan Secondary, stated that the tax was unfair and that the road would change the neighborhood amenity of a pedestrian and bicycle trail to the Mid-County Park.
2. Mr. William S. Jordan, 3508 Frances Berkeley, stated that the tax was unfair to be levied on the three subdivisions of Greensprings, Powhatan Secondary, and Governor's Land.
3. Mr. Bruce L. Manilla, 3525 Frances Berkeley, stated that the tax was discriminatory and should have been paid by the developers. He requested the Board completely review the Route 5 impact study.
4. Mr. Michael Kirby, 2712 Wingfield Close, asked for Board members explanation of why they denied changing the western terminus of Alternate Route 5. He asked those in the audience from Governor's Land to stand.
5. Mr. Lawrence Beamer, developer of Powhatan Secondary, stated that as representative for his landowners, he did not make proffers for off-site lot improvement, but was forced to pay like Greensprings and Governor's Land proffers. He suggested getting the rest of the County to vote to raise taxation.
6. Mr. Gene Griffith, 233 Jones Mill Road, as an active member and representative of the homeowners, expressed their opposition to the tax increase as unfair and unreasonable, and in addition, the fact that the Board approved construction of Monticello Marketplace and public facility adjacent to their neighborhood.
7. Mr. Ed Brueck, 3021 John Vaughn, spoke in disagreement with the tax increase as discriminatory and that the quality of life would deteriorate.
8. Mr. Jerry Moum, 1757 Founders Hill South, spoke in opposition to the tax increase and stated that he was informed of the special tax district but that the increase would not be until 1999. He suggested making Alternate Route 5 a toll road.
9. Ms. Sandra Davis, 39 John Shropshire, stated that the tax increase should be shared by the County as it was unfair to burden residents in a special tax district.
10. Mr. Grant Olson, 105 Holman, recalled when widening of Route 5 to alleviate traffic was discussed and the alternative found to move the additional traffic was Alternate Route 5. He stated that the road would be highly accepted when completed.
11. Mr. Ed Oyer, 139 Indian Circle, read a section from the County Charter regarding creation of a special tax district.
12. Mr. Jack Butler, 2900 Thomas Smith Lane, expressed dissatisfaction with paying a special tax for a road that was not wanted, will cause inconvenience, and be a safety hazard.

Mr. Edwards closed the public hearing.

Mr. Edwards explained that in 1992, traffic on Route 5 increased and VDOT determined that the road should be widened to four lanes. An alternative was needed to protect Historic Route 5 and houses along that corridor. The Board determined the special tax district for an Alternate Route 5 would be the solution although the taxation would seem unfair and discriminatory when the time came. He further explained that no funding was available to move the western terminus of Alternate Route 5, and as an elected official who represented all of the County, he stated that Alternate Route 5 was necessary for the County network of roads.

Mr. Sisk stated that when planned in 1992, Alternate Route 5 was to be a development driven road and 1998 real estate tax assessments needed for all service demands were unknown. He indicated he had been in favor of moving the terminus west but after the 3-2 vote, the County has to be consistent with initial plan and work with the State contract.

Mr. Bradshaw explained that only a compelling case would call for reconsideration of a long-term plan from a prior Board. He stated that crossing wetlands would have made the moving of the western terminus costly with no alternative funding mechanism. He indicated assessment, homeowners' restrictions, etc., were obligations on record before homes were purchased.

Mr. McGlennon stated that an agreement was in place for which taxes were necessary to complete the project. He indicated the basis of being unwilling to reconsider was that the alternative would not provide significant advantage of safety and damage to wetlands.

Mr. Nervitt made a motion to defer to review a safer alternative. He stated analyses should be done on safety and an alternative option with funding. He stated the tax increase pitted community against community and neighbor against neighbor.

Board and staff discussed traffic would increase on Route 5 with upcoming development; consequences of violation of agreement; obligated time limitations; adopt tax rate and request study of moving western terminus; Federal monies now included may not be available if delay occurred; if tax revenue not generated by July 1999, the construction would be delayed; and unlikely funds could be found for moving western terminus.

On a roll call to defer, the vote was: AYE: Nervitt (1). NAY: Sisk, McGlennon, Bradshaw, Edwards (4).

Mr. Bradshaw made a motion to approve the resolution.

On a roll call, the vote was: AYE: Sisk, McGlennon, Bradshaw, Edwards (4). NAY: (0). ABSTAIN: Nervitt (1).

## RESOLUTION

### ADOPTION OF BUDGET AND TAX RATE

#### ROUTE 5 TRANSPORTATION IMPROVEMENT DISTRICT

WHEREAS, the Board of Supervisors of James City County has been requested to increase the the real property tax rate for the Route 5 Transportation Improvement District from one cent to ten cents per \$100 of assessed value; and

WHEREAS, the recommendation is based on a fiscal year-end review of the cash position and expected revenues and expenditures of the District through the 1999 fiscal year; and

WHEREAS, an amended project budget has been created based on both the most recent estimates of the project cost and State funds available to fund the project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby agrees to increase the real property tax within the Transportation Improvement District from one cent to ten cents per \$100 of assessed value, effective as of July 1, 1998.

BE IT FURTHER RESOLVED that the Board of Supervisors adopt, for fiscal planning purposes, the following project budget for the fiscal year ending June 30, 1999.

REVENUES:

Developer Funds	\$ 3,754,750
Real Estate Taxes	255,000
State Funds	3,120,000
Borrowed Funds	<u>3,000,000</u>
	<u>\$10,129,750</u>

EXPENDITURES:

VDOT Project Costs	\$ 8,384,000
Other Project Costs	<u>1,745,750</u>
	<u>\$10,129,750</u>

2. Ordinance Amendment, Chapter 7, Enterprise Zone, Section 7-3, Definitions

Mr. Leo P. Rogers, Deputy County Attorney, stated that the proposed ordinance would amend the definition for full-time permanent positions required by recent changes to the State Code.

Staff recommended approval of the ordinance amendment.

Mr. Edwards opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Sisk made a motion to approve the ordinance amendment.

On a roll call, the vote was: AYE: Sisk, McGlennon, Bradshaw, Nervitt, Edwards (5). NAY: (0).

3. Ordinance Amendment, Chapter 3, Animal Control, Article III, Dog Licenses

Mr. Rogers stated that the proposed ordinance amendment would eliminate the requirement that a dog license reflect the gender of the animal.

Staff recommended approval of the ordinance amendment.

Mr. Edwards opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Sisk made a motion to approve the ordinance amendment.

On a roll call, the vote was: AYE: Sisk, McGlennon, Bradshaw, Nervitt, Edwards (5). NAY: (0).

4. Ordinance Amendment, Chapter 12, Licenses, Article V, Therapeutic Massage, Definitions

Mr. Rogers stated that the proposed ordinance amendment would eliminate the requirement that massage therapists and massage clinics receive permits from the County.

Staff recommended approval of the ordinance amendment.

Mr. Edwards opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. McGlennon made a motion to approve the ordinance amendment.

On a roll call, the vote was: AYE: Sisk, McGlennon, Bradshaw, Nervitt, Edwards (5). NAY: (0).

## F. BOARD CONSIDERATIONS

### 1. Board of Supervisors Agenda - Public Comment

Mr. Sanford B. Wanner, County Administrator, stated that the Board of Supervisors, at its January 28, 1998, meeting, agreed to institute two public comment periods for the regular Board of Supervisors meetings. He further stated that the 15-minute public comment period at the beginning of the meeting was designed to accommodate and encourage speakers who normally did not attend Board meetings.

Mr. Wanner indicated that that goal was not being met as the first period was seldom used and had a time limit.

Following a brief discussion, the Board agreed to continue the first public comment period at the beginning of each meeting and to reconsider the number of public comment periods at its January 1999 Organizational Meeting.

Mr. McGlennon asked staff to publicize the 15-minute public comment period at the beginning of each meeting in FYI newsletter.

## G. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, spoke in favor of the early 15-minute comment period. He noted the death of County businessman Josh Palmer. Mr. Oyer stated that the entrance into James City County on Route 60 East needed some maintenance on the landscape. He asked the status of the buffer between the Poplar Hall neighborhood and Country Village Mobile Home Park.

2. Mr. Jeff Cattell, 2805 Sassafras Court, spoke in favor of the early 15-minute comment period; questioned about timing in that the County Charter was approved in 1993, the Transportation Improvement District in 1992, and funding could have been found in the County budget for the added cost of moving Alternate Route 5 western terminus.

3. Mr. Lawrence Beamer, owner of Powhatan Secondary, referenced the comment that \$11,000,000 was proffered in 1992 for Alternate Route 5, that \$3,000,000 was needed, where is the other \$8,000,000?

Mr. John T. P. Horne, Manager of Development Management, stated that proffers were available through 1992 and 1993 developments plan documented in a variety of sources, and there was never \$11,000,000 in proffers.

## H. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner commended a citizen, Mr. Larry Jackson of Brook Haven subdivision, for his assistance in helping pick up trash on Jolly Pond Road.

Mr. Wanner expressed thanks to citizens who provided food at a reception for foreign students who are studying this semester at the College of William and Mary. This program was begun by Neighborhood Connections.

Mr. Wanner announced the County received three 1998 National Association of Counties Achievement Awards for programs entitled, *Benchmarking Partnerships*, *Creating a Community Living Room*, and *Partnership for Open Space Preservation*.

Mr. Wanner recommended a recess for a James City Service Authority Board of Directors' meeting, followed by an Executive Session pursuant to Section 2.1-344(A)(1), appointment of individuals to County boards and/or commissions, Section 2.1-344(A)(7) to consult with County Attorney on a matter involving probable litigation and Section 2.1-344(A)(3) to consider acquisition of a parcel of property.

Mr. Wanner announced a Work Session, Wednesday, July 29, 1998, at 2:00 p.m., on Agricultural and Forestal Districts policies; 3:30 p.m., Legislative Issues with Senator Thomas K. Norment, Jr., and Delegate George W. Grayson; and followed by an executive session for County Administrator's annual evaluation.

## **I. BOARD REQUESTS AND DIRECTIVES**

Mr. Sisk asked staff to prepare a resolution of commemoration for Judge Russell Carneal for the August 18, 1998, Board of Supervisors' meeting.

Mr. Edwards stated that one of the benefits of Neighborhood Connections programs was that neighborhoods were good hosts for foreign visitors.

Mr. Edwards recessed the Board for a James City Service Authority Board of Directors meeting at 9:53 p.m.

Mr. Edwards reconvened the Board into open session and made a motion to go into executive session as recommended by the County Administrator.

On a roll call, the vote was: AYE: Sisk, McGlennon, Bradshaw, Nervitt, Edwards (5). NAY: (0).

## **J. EXECUTIVE SESSION**

Mr. Edwards reconvened the Board into open session and made a motion to approve the executive session resolution, at 10:35 p.m.

On a roll call, the vote was: AYE: Sisk, McGlennon, Bradshaw, Nervitt, Edwards (5). NAY: (0).

## **RESOLUTION**

### **CERTIFICATION OF EXECUTIVE MEETING**

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive

meeting to which this certification resolution applies; and, ii) only such public business matters were heard, discussed or considered by the Board as were identified in the motion, Section 2.1-344(A)(1), appointment of individuals to County boards and/or commissions, Section 2.1-344(A)(3) acquisition of a parcel of property for public use, and Section 2.1-344(A)(7) to consult with County Attorney on a matter involving probable litigation, convening the executive meeting.

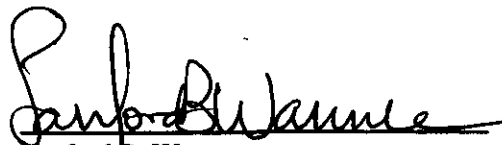
Mr. Edwards made a motion to appoint Willis Barnes to the Clean County Commission for a three-year term, term expiring 7/28/01; to appoint Robert Hunt to the Lower James River Advisory Committee for a four-year term, term expiring 7/28/02; and to reappoint John Labanish and James D. Dorsey to the Historical Commission for three-year terms, terms expiring 8/31/01, respectively.

On a roll call, the vote was: AYE: Sisk, McGlennon, Bradshaw, Nervitt, Edwards (5). NAY: (0).

Mr. Edwards made a motion to adjourn.

On a roll call, the vote was: AYE: Sisk, McGlennon, Bradshaw, Nervitt, Edwards (5). NAY: (0).

The Board adjourned at 10:38 p.m.

  
Sanford B. Wanner  
Clerk to the Board

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JUL 28 1998

ORDINANCE NO. 192A-2

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 7, ENTERPRISE ZONE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 7-3, DEFINITIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 7, Enterprise Zone, of the Code of the County of James City, Virginia, is hereby amended and reordained by amending Section 7-3, Definitions.


#### Chapter 7. Enterprise Zone

##### Sec. 7-3. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

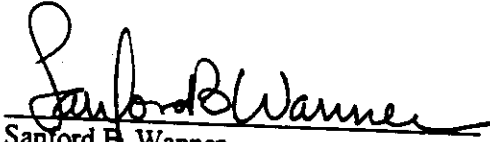
*Full-time permanent positions. Employment for 35 hours a week or more with no limitation on the length of employment. Jobs of indefinite duration requiring either (i) a minimum of 35 hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee.*

Ordinance to Amend and Reordain  
Chapter 7. Enterprise Zone  
Page 2



Jack D. Edwards, Chairman  
Board of Supervisors

ATTEST:



Sanford B. Wanner  
Clerk to the Board

SUPERVISOR	VOTE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
NERVITT	AYE
EDWARDS	AYE

1998. Adopted by the Board of Supervisors of James City County, Virginia, this 28th day of July,

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JUL 28 1998

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

ORDINANCE NO. 7A-16

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, ANIMAL CONTROL, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE III, DOG LICENSES, SECTION 3-45, DOG LICENSES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 3, Animal Control, is hereby amended and reordained by amending Section 3-45, Dog Licenses.

Chapter 3. Animal Control  
Article III. Dog Licenses

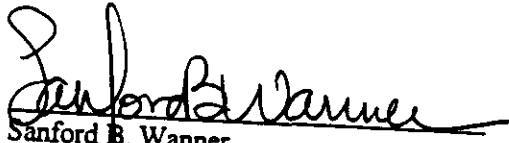
Section 3-45. Dog licenses.

(c) *Authority of treasurer, issuance of license receipt.* The treasurer, or his designee, shall only have authority to license dogs of resident owners who reside within the boundary limits of the county and may require information to this effect from any applicant. Upon receipt of proper application and rabies vaccination certificate, the treasurer or his designee shall issue a license receipt for the amount on which, he shall record the name and address of the owner, the date of payment, the year for which issued, the serial number of the tag, whether male, unsexed female, female or kennel, and deliver the metal license tags or plates provided for herein. Such tags shall be stamped or otherwise permanently marked to show the name of the county, ~~the sex of the dog,~~ the calendar year for which issued and bear a serial number.



Jack D. Edwards, Chairman  
Board of Supervisors

ATTEST:

  
Sanford B. Wanner  
Clerk to the Board

SUPERVISOR	VOTE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
NERVITT	AYE
EDWARDS	AYE

1998. Adopted by the Board of Supervisors of James City County, Virginia, this 28th day of July,

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JUL 28 1998

ORDINANCE NO. 87A-4

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 12, LICENSES, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA. BY AMENDING ARTICLE V, THERAPEUTIC MASSAGE, SECTION 12-114, DEFINITIONS; AND SECTION 12-115, PERMIT REQUIRED; BY DELETING SECTION 12-117, APPLICATIONS; SECTION 12-118, REFERRAL OF APPLICATIONS; SECTION 12-119, ISSUANCE OF PERMITS; SECTION 12-120, DISPLAY OF PERMIT AND LIST OF EMPLOYED TECHNICIANS; SECTION 12-120.1, PERMIT FEES; SECTION 12-121, REQUIRED FACILITIES; MAINTENANCE; SECTION 12-121.1, OPERATING REQUIREMENTS; SECTION 12-122, HOURS OF OPERATION; SECTION 12-123, HEALTH REQUIREMENTS FOR MASSAGE TECHNICIANS; SECTION 12-123.1, RIGHT OF INSPECTION; SECTION 12-123.2, KEEPING OF RECORDS; SECTION 12-123.3, ALCOHOLIC BEVERAGES PROHIBITED; SECTION 12-125, WHERE MASSAGE PERMITTED; SECTION 12-126, RESPONSIBILITIES OF PERMITTEE; SECTION 12-127, REVOCATION AND SUSPENSION OF PERMITS GENERALLY; SECTION 12-128, PERMIT NONTRANSFERABLE; GROUNDS FOR REVOCATION; BY AMENDING AND RENUMBERING SECTION 12-124, EXPOSURE OR MASSAGE OF CERTAIN PORTIONS OF BODY PROHIBITED; AND SECTION 12-129, PENALTY; AND BY RENUMBERING SECTION 12-129.1, SEVERABILITY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 12, is hereby amended and reordained by amending Article V, Therapeutic Massage, Section 12-114, Definitions; and Section 12-115, Permit required; by deleting Section 12-117, Applications; Section 12-118, Referral of applications; Section 12-119, Issuance of permits; Section 12-120, Display of permit and list of employed technicians; Section 12-120.1, Permit fees; Section 12-121, Required facilities; Maintenance; Section 12-121.1, Operating requirements; Section 12-122, Hours of operation; Section 12-123, Health requirements for massage technicians; Section 12-123.1, Right of inspection; Section 12-123.2, Keeping of records; Section 12-123.3, Alcoholic

beverages prohibited; Section 12-125, Where massage permitted; Section 12-126, Responsibilities of permittee; Section 12-127, Revocation and suspension of permits generally; Section 12-128, Permit nontransferable; Grounds for revocation; by amending and renumbering Section 12-124, Exposure or massage of certain portions of body prohibited, to new number 12-117; and Section 12-129, Penalty, to new number 12-118; and by renumbering Section 12-129.1, Severability, to new number 12-119.

## Chapter 12. Licenses

### Article V. Therapeutic Massage

#### Sec. 12-114. Definitions.

For the purposes of this article, the following words and terms shall have the meanings respectively ascribed to them by this section:

~~*Administrator.* The James City County Administrator or his designee.~~

~~*Applicant.* Any person applying for a permit under this article and must include all partners, including limited partners, of a partnership applicant, all officers and directors of a corporate applicant and any stockholder holding more than 25 percent of the stock of a corporate applicant.~~

~~*Approved school.* Any school recognized by or approved by or affiliated with the American Massage and Therapy Association, Inc., any other school having a professional massage technician curriculum approved by the Virginia Board of Education and which issues a certificate of satisfactory completion of training in such discipline, or any out-of-state school which, in the discretion of the director, provides massage instruction equal to or greater than the standards set by the Virginia Board of Education.~~

~~*Director.* The district health director of the Peninsula Health District or his designee.~~

*Erogenous area.* The genitals, pubic area, anus or perineum of any person, or the vulva or breasts of a female.

*Massage.* A method of treating the external parts of the body for medical, hygienic, exercise or relaxation purposes by rubbing, stroking, kneading, tapping, pounding, vibrating or stimulating with the hands or any instrument, or by the application of air, liquid or vapor baths of any kind.

~~*Massage clinic.* Any establishment having a fixed place of business where any person engages in, carries on, or permits to be engaged in or carried on any business of giving of any kind or character of massage,~~

~~not including the residence of any patron.~~

*Massage technician.* Any person who administers a massage to another person for consideration and who has a valid permit issued ~~under this article pursuant to Va. Code § 54.1-3029.~~

*Patron.* Any person who receives a massage in exchange for the payment of money or any other consideration.

*Permit.* A current card or other document issued by the ~~administrator evidencing compliance with the application provisions of this article State Board of Nursing evidencing compliance with Va. Code § 54.1-3029.~~

~~Permitted.~~ Any person issued a permit under this article or the operator of a licensed massage clinic.

*Person.* Any individual, partnership, firm, association, joint stock company, corporation, or combination of individuals of whatever form or character.

#### Sec. 12-115. Permit required.

It shall be unlawful for person to conduct, perform or permit to be given a massage *to a patron* in or upon any premises in the county except by a massage technician with a permit issued pursuant to ~~this article Va. Code § 54.1-3029.~~ ~~It shall be unlawful for any person, including a massage technician, to conduct, perform, or permit to be given a massage in a fixed place of business within the county without obtaining a massage clinic permit pursuant to this article.~~ *Massage technicians shall have their permit available whenever they perform a massage.*

#### Sec. 12-116. Exemptions.

The requirements of section 12-115 shall not apply to a physician, surgeon, chiropractor or osteopath duly licensed by the state, or to a licensed nurse, licensed physical therapist or graduate from an approved school acting under direct prescription and direction of any physician, surgeon, chiropractor or osteopath for treatment of a specified ailment. The requirements of section 12-115 shall not apply to barbershops or beauty parlors in which massage is given to the scalp, the face, the neck or the shoulders only.

#### ~~Sec. 12-117. Applications:~~

~~(a) *Massage technician permit.* Any person desiring a permit to perform or conduct massages in the county shall make application to the administrator. Such application shall be accompanied by a receipt showing payment to the county treasurer of the nonrefundable application fee provided in section 12-120.1. Such fee shall cover the cost of investigation, inspection and monitoring by the administrator and the director. The applicant for a permit shall furnish the following information:~~

~~(1) Full legal name, home and business addresses and phone numbers;~~

Ordinance to Amend and Reordain  
Chapter 12. Licenses  
Page 4

- ~~(2) Social security number;~~
- ~~(3) Height, weight, color of eyes, sex;~~
- ~~(4) Portrait photograph of applicant, giving a clear view of the applicant's face;~~
- ~~(5) Complete history of applicant's related employment experience with names and phone numbers of employers or references;~~
- ~~(6) Written proof of graduation from an approved school;~~
- ~~(7) A copy of a valid business license issued by the county, if applicable;~~
- ~~(8) Any criminal convictions of the applicant, other than traffic offenses, listing the places of each such convictions;~~
- ~~(9) Written authorization for the county, its agents and employees to conduct an investigation into the truth of information provided by the applicant; and~~
- ~~(10) Written declaration under oath, duly dated and signed by the applicant, certifying that the information contained in the application is true and correct.~~

~~(b) *Massage clinic permit.* Any person desiring a permit to operate a massage clinic in the county shall make application to the administrator. Such application shall be accompanied by a receipt showing payment to the county treasurer of the nonrefundable application fee provided in section 12-120.1. Such fee shall cover the cost of investigation, inspection and monitoring by the administrator and the director. The applicant for the permit shall furnish the following:~~

- ~~(1) Legal name of applicant and any trade name, and its business address and phone number;~~
- ~~(2) Applicant's social security number and/or employer identification number;~~
- ~~(3) Applicant's related employment or business experience, with the names and phone numbers of employers or references;~~
- ~~(4) List of each massage technician employed or to be employed by the applicant;~~
- ~~(5) Copy of business license issued by the county;~~
- ~~(6) Any criminal conviction of the applicant, other than traffic offenses, listing the place of each such conviction;~~
- ~~(7) Written authorization for the county, its agents and employees to conduct an investigation into the truth of the information provided by the applicant; and~~



Ordinance to Amend and Reordain  
Chapter 12. Licenses  
Page 5

- ~~(8) Written declaration under oath, dated and signed by the applicant, certifying that the information contained in the agreement is true and correct.~~

~~Sec. 12-118. Referral of applications:~~

~~(a) The administrator shall refer a copy of a massage technician application to the director and the police department, who shall review such application and make a written recommendation to the county administrator within ten days.~~

~~(b) The administrator shall refer a copy of a massage clinic application to the director, the police department and administrative offices of the county charged with the enforcement of building, plumbing, electric and fire prevention codes. Each such person or department shall, within ten days, inspect the premises proposed to be operated as a massage clinic and make written recommendations to the administrator.~~

~~Sec. 12-119. Issuance of permits:~~

~~Within 21 days of the application, the administrator shall issue or reissue in case the permit has expired or been revoked, the permit if he shall find:~~

- ~~(1) The premises to be used or constructed meets the building, plumbing, electric and fire prevention codes of the county as reported by the administrative officers of the county.~~
- ~~(2) The applicant meets and complies with all requirements of this article and all other applicable laws.~~
- ~~(3) The applicant has not been convicted of any felony or demeanor involving dishonesty, fraud or moral turpitude, unless such conviction occurred at least five years prior to the date of the application.~~
- ~~(4) The applicant for a massage technician permit or every massage technician employed or to be employed by the applicant for a massage clinic permit holds a certificate of graduation from an approved school and is qualified as a massage therapist by the American Massage Therapy Association, Inc., Associated Bodyworks & Massage Professionals, Inc. (Level 1 member), or similar professional association which, in the discretion of the administrator, has equivalent eligibility standards.~~
- ~~(5) The applicant has not made any false, misleading or fraudulent statement of fact in the permit application or in any document required by the county in conjunction therewith.~~

~~Every permit issued pursuant to this article shall remain in force until January 31 of the next following year, unless sooner suspended or revoked.~~

~~Sec. 12-120. Display of permit and list of employed technicians.~~

~~Massage technicians shall have their permit available whenever they perform a massage. Every massage clinic shall display its permit in a conspicuous place, so that such may be readily seen by anyone entering the premises. The massage clinic shall also display in a conspicuous place a list of all massage technicians employed in the massage clinic.~~

~~Sec. 12-120.1. Permit fees:~~

~~The permit fees here provided are the costs of investigations and monitoring by the administrator, the health department and other departments:~~

- ~~(a) An initial permit application fee of \$250.00 shall be paid to the county treasurer by each applicant for a massage clinic permit. The permit, when issued, shall remain in force until January 31 of the next following year. The permittee shall renew such permit by February 1 of each ensuing year by filing the required renewal application and paying a renewal permit fee of \$50.00 to the county treasurer not later than the thirty-first day of January of each year.~~
- ~~(b) An initial permit application fee of \$100.00 shall be paid to the county treasurer by each applicant for a massage technician permit. The permit, when issued, shall remain in force until January 31 of the next following year. The permittee shall renew such permit by February 1 of each ensuing year by filing the required renewal application and paying a renewal fee of \$25.00 to the county treasurer not later than the thirty-first day of January of each year.~~
- ~~(c) No permit fee shall be prorated nor shall any permit be transferable to another person.~~

~~Sec. 12-121. Required facilities; maintenance:~~

~~Each massage clinic shall have and maintain in a clean, sanitary and workable condition:~~

- ~~(1) Adequate equipment or arrangements for disinfecting nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after each use.~~
- ~~(2) Washbasins provided with both hot and cold running water installed in either the toilet room or a vestibule immediately adjacent thereto. Washbasins shall be provided with soap and dispenser with sanitary towels.~~
- ~~(3) Closed cabinets used for 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.~~
- ~~(4) Rest rooms as required under the county's building regulations.~~

Ordinance to Amend and Reordain  
Chapter 12. Licenses  
Page 7

- ~~(5) Separate massage and dressing rooms for each sex if male and female are to be served simultaneously.~~
- ~~(6) A service sink for custodial services provided either in the massage clinics quarters or on the floor of the building on which the quarters are located.~~
- ~~(7) Massage tables and steam or bath areas with nonporous surfaces which may be readily disinfected.~~

~~Sec. 12-121.1. Operating requirements:~~

- ~~(a) Every portion of the massage clinic, including appliances and apparatus, shall be 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 and massage technicians shall be clean and wear clean, fully opaque clothing.~~
- ~~(d) Sanitary towels and linens shall be provided for each patron of the massage clinic. No common use of towels or linens shall be permitted.~~
- ~~(e) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and other physical facilities shall be kept in good repair and maintained in a sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. When carpeting is used on the floors, it shall be kept dry.~~
- ~~(f) Oils, creams, lotions or other preparations used in administering massages shall be kept in clean, closed containers or cabinets.~~
- ~~(g) Eating in the massage work areas shall not be permitted. Animals, except for seeing eye dogs, shall not be permitted in the massage work areas.~~
- ~~(h) Each massage technician shall wash his or her hands in hot running water using proper soap or disinfectant before administering a massage to each patron.~~

~~Sec. 12-122. Hours of operation:~~

~~No massage clinic or technician shall administer any massage between the hours of 10:00 p.m. and 6:00 a.m. of the following morning.~~

Ordinance to Amend and Reordain  
Chapter 12. Licenses  
Page 8

~~Sec. 12-123. Health requirements for massage technicians:~~

~~(a) No massage technician shall give a massage or come in contact with a patron unless such massage technician shall be free of any contagious or communicable disease. The director may, for cause, require that a massage technician not be allowed to give massage unless and until any such person provides the director with a certificate from a medical doctor, duly licensed by the State of Virginia, that such person has been examined within the previous ten days and found to be free of all contagious or communicable disease. Upon the director's recommendation, the administrator shall suspend the permit until such certificate is received.~~

~~(b) No massage technician shall knowingly serve any patron infected with fungus or other skin infection, nor shall service be performed on any patron exhibiting skin inflammation or eruptions, provided, however, that a physician, duly licensed by the State of Virginia, may certify that any such patron may be safely served presending the conditions thereof.~~

~~Sec. 12-123.1. Right of inspection:~~

~~The police department or the department of public health may, from time to time, make an inspection of each massage clinic granted a permit under this article for the purposes of determining compliance. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any permittee to fail to allow such inspection officer access to the premises or to hinder such officer in any manner.~~

~~Sec. 12-123.2. Keeping of records.~~

~~Every massage clinic or massage technician shall at all times keep an appointment book in which the name and address of each patron shall be entered, together with the time, date, service provided, and price charged.~~

~~Sec. 12-123.3. Alcoholic beverages prohibited:~~

~~No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed or kept, any alcoholic beverage on the premises of any massage business.~~

~~Sec. 12-124/117. Exposure or massage of certain portions of body prohibited.~~

~~(a) It shall be unlawful for any massage technician or any person employed in a massage clinic to massage, fondle or touch in any manner an erogenous area, or any portion thereof, of any person.~~

~~(b) It shall be unlawful for any massage technician or person employed in a massage clinic to expose or fail to keep covered with fully opaque clothing an erogenous area, or any portion thereof, of his or her body while in the presence of any patron.~~

Ordinance to Amend and Reordain  
Chapter 12. Licenses  
Page 9

~~Sec. 12-125. Where massage permitted:~~

~~Each massage clinic shall have one area designated for massage, or in the event massage be administered to both sexes during the same times, such massage clinic shall have two separate massage areas one being for male and one being for female patrons. All massages shall be administered in such massage area or areas. The massage area or areas shall be open to inspection by the director or his designee and other law enforcement officers of the county during business hours.~~

~~Sec. 12-126. Responsibilities of permittee:~~

~~No person granted a massage clinic permit under this article shall operate under any name or at any location not specified in the permit. The permittee shall be responsible for maintaining the premises in accordance with the requirements of this article and for the conduct of all agents and employees in complying with the requirements of this article. Such permittee shall not permit in its premises activity or behavior prohibited by the laws of the United States, state or this county, relating to gambling, prostitution, sodomy, adultery, fornication, lewd and lascivious cohabitation or other laws relating to obscenity or moral turpitude.~~

~~Sec. 12-127. Revocation and suspension of permits generally:~~

~~The administrator may revoke or suspend for a term, as hereinafter provided, any permit issued pursuant to this article upon the violation of any of the rules, requirements or restrictions of this article. No permit, however, shall be revoked until after a hearing shall have been held by the administrator to determine just cause of such revocation. At such hearing the permittee shall be given the opportunity to present evidence and argument against revocation or suspension. Notice of such hearing shall be given the permittee by mailing, at least five days prior to such hearing, a written statement setting forth the grounds of the complaint, addressed to the permittee at the address on the permit. The decision of the administrator shall be final. After such hearing, the administrator may suspend such permit for a term not to exceed 60 days, revoke the permit or dismiss the complaint.~~

~~Sec. 12-128. Permit nontransferable; grounds for revocation:~~

- ~~(a) It shall be unlawful for any person to sell, convey or otherwise transfer a permit issued under this article.~~
- ~~(b) A massage clinic permit shall be revoked or rendered null and void, ipso facto, if:
 
  - ~~(1) The permittee or a 25 percent or greater interest in the permittee is sold, conveyed or otherwise transferred without the express written consent of the administrator;~~
  - ~~(2) The structure of the massage clinic is substantially enlarged or altered without the express written consent of the administrator; or~~~~

~~(2) The massage clinic employs a massage technician, whether or not such person has a valid permit, without listing or notifying the administrator pursuant to section 12-117 or otherwise.~~

Sec. 12-~~129~~-118. Penalty.

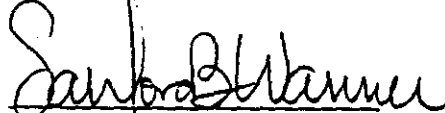
Any person, firm or corporation who shall violates any of the provisions of this article shall, in addition to being subject to the provisions of sections 12-127 and 12-128, be guilty of a *first class* misdemeanor and upon conviction thereof shall be punished by a fine not exceeding ~~\$1,000.00~~ \$2,500.00 or by confinement in jail for a period not exceeding one year, either or both.

Sec. 12-~~129~~-119. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this article, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article or any part thereof.

  
\_\_\_\_\_  
Jack D. Edwards  
Chairman, Board of Supervisors

ATTEST:

  
\_\_\_\_\_  
Sanford B. Wanner  
Clerk to the Board

SUPERVISOR	VOTE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
NERVITT	AYE
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 28th day of July, 1998.