

ADOPTED

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.~~

~~*Permittee.* 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;~~

- ~~(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~~

(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 misdemeanor 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 linens, 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.~~

~~(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.~~

~~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 prescribing 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.

~~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~~

~~(3) 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.

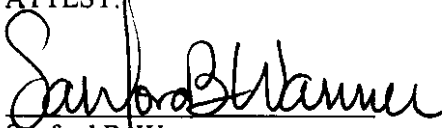
Any person, firm or corporation who shall violates any of the provisions of this article shall, ~~in addition to being subject to the provisions of sections 12-127 and 12-128;~~ be guilty of a *first class* misdemeanor and upon conviction thereof shall be punished by a fine not exceeding ~~\$1,000.00~~ *\$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

<u>SUPERVISOR</u>	<u>VOTE</u>
SISK	AYE
MCLENNON	AYE
BRADSHAW	AYE
NERVITT	AYE
EDWARDS	AYE

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