

AGENDA ITEM REQUEST

AGENDA ITEM # 8.d.

Meeting Date: September 20, 2011	Type: Regular <input checked="" type="checkbox"/> Special _____
Requestor: _____ Council _____ Manager <input checked="" type="checkbox"/> Attorney _____ Community Devlp. _____ Community Svc. _____ Public Works _____ Police _____ Treasurer	Item: Second Reading of Ordinance to: AMEND THE CODE OF THE TOWN OF DUMFRIES, VIRGINIA (2006), AS AMENDED, BY DELETING SECTION 18-70, AMENDING SECTIONS 18-140 THROUGH 18- 174 RELATING GENERALLY TO MASSAGE THERAPY, and ENACTING SECTIONS 18-175 THROUGH 18-183 ALSO GENERALLY RELATING TO MASSAGE THERAPY
Reviewed: _____ Council _____ Manager <input checked="" type="checkbox"/> Attorney _____ Community Devlp. _____ Community Svc. _____ Public Works _____ Police _____ Treasurer _____ Other _____	Review:
Recommend: YES: _____ NO: _____	Attachments: 1. Proposed ordinance amendment 2. Prince William Health District Massage Establishment Application 3. Town of Dumfries Massage Therapist Permit Application (to be revised pursuant to enactment of proposed ordinance)

ORDINANCE #O-2011-____

Introduction
Enacted
Effective

**AMEND THE CODE OF THE TOWN OF DUMFRIES, VIRGINIA
(2006), AS AMENDED, BY DELETING SECTIONS 18-70 AND
AMENDING SECTIONS 18-140 THROUGH 18-174 RELATING
GENERALLY TO MASSAGE PARLORS**

BE IT ORDAINED by the Council of the Town of Dumfries, Virginia, meeting in regular session this ____ day of _____, 20 ____:

1. That the Code of Ordinances, Town of Dumfries, Virginia, as amended, is further amended by deleting Section 18-70, as follows:

~~Sec. 18-70. Massage parlors.~~

~~In order to provide for the periodic inspections required under section 17-143 relating to massage parlors, and for the administration of the regulations covering their operation, on every massage parlor for which a permit has been issued by the town clerk as provided in section 18-171, there shall be an annual license tax of \$1,000.00 for each massage technician licensed and employed in the establishment, which license shall be nontransferable and shall not be prorated.~~

2. That the Code of Ordinances, Town of Dumfries, Virginia, as amended, is further amended by amending Sections 18-140 through 18-174, and is reenacted as follows:

ARTICLE III. -- MASSAGE PARLORS

DIVISION 1. -- GENERALLY

Sec. 18-140. -- Definitions.

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~Massage means a method of treating the external parts of the human body for comfort or the general well-being of the body, consisting of rubbing, stroking, kneading, tapping or vibrating with the hand or any instrument.~~

~~Massage parlor means any establishment having a fixed place of business where massages are administered. This definition shall not be construed to include a hospital, a nursing home, a medical clinic or the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath, or barbershops or beauty salons in which massages are administered only to the~~

scalp, the face, the neck or the shoulder.

Massage technician means any person who administers a massage to another person at a massage parlor. This definition shall not be construed to include a physician, surgeon, chiropractor, physical therapist or nurse duly licensed by the commonwealth.

Sexual or genital parts means the penis, genital area, pubic area, anus, perineum or vulva of any person.

Sec. 18-141. -- Prohibited acts.

(a) It shall be unlawful for a massage technician to perform any of the following acts:

(1) The placing of the hand or hands upon, touching with any part of the body, fondling in any manner, or massaging a sexual or genital part of any other person.

(2) Exposing sexual or genital parts, or any portion thereof, to any other person.

(3) Failing to conceal in the presence of any other person with a fully opaque covering, the sexual or genital parts of such massage technician.

(b) It shall be unlawful for any person owning, operating or managing a massage parlor knowingly to cause, allow, or permit in or about such massage parlor any agent or employee or any other person under his control or supervision or any other massage technician to perform any act prohibited in subsection (a) of this section.

(c) It shall be unlawful for any person to provide massage services in exchange for consideration, or to operate a public or private establishment providing such services, where any physical contact with the recipient of such services is provided by a person of the opposite sex.

(d) Subsection 7-277(c) shall not apply to a physician, surgeon, chiropractor, osteopath, naturopath, or physical therapist duly licensed by the commonwealth, not to a massage therapist certified by the state board of nursing, nor to a licensed nurse acting under the direct prescription and direction of any such physician, surgeon, chiropractor, osteopath or naturopath, nor shall this section apply to barbershops or beauty parlors in which massage is given to the scalp, the face, the neck or the shoulders.

(e) Any person who shall violate the provisions of this section shall be guilty of a class 1 misdemeanor.

Sec. 18-142. -- Posting of copy of regulations.

Every person owning, operating or managing a massage parlor shall post a copy of this article and a summary of its key provisions prepared by the town clerk in a conspicuous place in a massage parlor so that it may be readily seen by persons entering the premises.

Sec. 18-143. -- Inspections.

Inspections of massage parlors shall be made at periodic intervals by plainclothes police officers, who shall display their badges, to determine if all massage technicians have valid permits.

DIVISION 2. -- MASSAGE TECHNICIAN PERMIT

Sec. 18-170. -- Required.

- (a) ~~It shall be unlawful for any massage technician to give a massage in a massage parlor without a valid nonsuspended permit issued pursuant to this article.~~
- (b) ~~It shall be unlawful for any person to establish, maintain or operate a massage parlor in which massage technicians who do not have a valid nonsuspended permit issued pursuant to this article perform massages.~~

Sec. 18-171. -- Issuance.

~~(a) Any person desiring a permit to perform the services of a massage technician at a massage parlor shall make application to the town clerk. Each technician permit application shall be accompanied by an investigation fee of \$50.00, payable to the treasurer of the town. Each such application shall contain the name, address, telephone number, last previous address, date of birth, place of birth, height, weight, and current and last previous employment of the applicant. In addition, such application shall include a sworn statement as to whether or not the applicant has ever been convicted, pleaded nolo contendere, or suffered a forfeiture on any felony charge or a charge of violating any provision included in Code of Virginia, §§ 18.2-344—18.2-361, 18.2-365—18.2-370, 18.2-372—18.2-382 and 18.2-387, which laws relate to sexual offenses, or on a charge of violating a similar law of any other jurisdiction, or on a charge of violating any provision of this article.~~

~~(b) The application shall state thereon that "it is unlawful for any person to make a false statement on this application, and discovery of a false statement shall constitute grounds for denial of an application or revocation of a permit."~~

~~(c) Each applicant shall be photographed and have his fingerprints taken, which fingerprints and photograph shall constitute part of the application.~~

~~(d) The permit shall be valid for a period of one year, and it may be renewed for additional one-year periods upon the filing of a new application and payment of the investigation fee. All provisions of this article shall apply to renewals in the same manner as they apply to applications for and granting of initial permits.~~

Sec. 18-172. -- Investigation of applicant; grounds for denial of application.

- (a) ~~Upon receipt of the fee provided for in section 18-171, the town clerk shall refer the application to the chief of police, who shall make or cause to be made a thorough investigation of the criminal record of the applicant.~~
- (b) ~~The town clerk shall deny any application for a massage technician permit under this article after notice and hearing if the chief of police finds that the applicant has been~~

~~convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision included in Code of Virginia, §§ 18.2-344—18.2-361, 18.2-365—18.2-370, 18.2-372—18.2-382 and 18.2-387, which laws relate to sexual offenses, or on a charge of violating a similar law of any other jurisdiction, or on a charge of violating any provision of this article. The making of a false statement on the application as provided for in section 18-171 shall also be grounds for denial of this permit. Notice of the hearing before the town clerk for denial of this application shall be given in writing, setting forth the grounds of the proposed denial of permit and the time and place of the hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least five days prior to the date set for the hearing.~~

~~Sec. 18-173. -- Revocation.~~

- ~~(a) The town clerk shall revoke the massage technician permit of any person after notice and hearing if he finds that such person has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision included in Code of Virginia, §§ 18.2-344—18.2-361, 18.2-365—18.2-370, 18.2-372—18.2-382, and 18.2-387, which laws relate to sexual offenses, or on a charge of violating a similar law of any other jurisdiction, or a charge of violating any provision of this article. The permit shall also be revoked by the town clerk if he finds after notice and hearing that any permit holder has made a false statement on the application provided for in section 18-171~~
- ~~(b) Notice of the hearing before the town clerk for revocation of the permit shall be given in writing, setting forth the grounds of the proposed revocation and the time and place of the hearing. Such notice shall be mailed by certified mail to the permit holder's last known address at least five days prior to the date set for the hearing.~~

~~Sec. 18-174. -- Display.~~

~~Every massage technician shall display the massage technician permit, on which the technician's photograph shall be attached, in a prominent place in the immediate area in which the technician is working so that it is clearly visible to the patrons of the massage parlor.~~

ARTICLE III MASSAGE THERAPY ¹

DIVISION 1. GENERALLY

Sec. 18-140 - Declaration of findings and policy.

It is hereby declared that the Town has found it necessary and proper to exercise its regulatory authority under the police power for the protection of the health, safety and general welfare of its citizens by providing for the permitting and regulation of massage therapists and massage establishments.

¹State Law reference— Massage therapy, Code of Virginia, § 54.1-3000; municipal license authority, Code of Virginia, § 58.1-3703.

Sec. 18-141 - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief means the Town of Dumfries chief of police, or the chief's designee.

Clerk means the Town of Dumfries clerk or the clerk's designee.

Client means any person receiving a massage from a massage therapist who has been compensated for administering the massage.

Director means the director of Prince William County Health District, or his designee.

Disqualifying offenses means offenses which disqualify an applicant from obtaining a permit pursuant to this article or, if the offender already holds a permit, which mandate revocation of the permit. Disqualifying offenses are:

- (1) Convictions, pleas of nolo contendere or a forfeiture on a charge of violating any provision of the Code of Virginia, §§ 18.2-346, 18.2-347 through 18.2-349, 18.2-355 through 18.2-358, 18.2-361, 18.2-368, 18.2-370, 18.2-370.1, 18.2-371, 18.2-386.1 or 18.2-387, which laws relate to sexual offenses, or any provision of an ordinance of the city or a law or ordinance of another jurisdiction which prohibits the same conduct, within the past ten years.
- (2) Convictions, pleas of nolo contendere or a forfeiture on a charge of violating any provision of this article, or on a charge of violating a similar law in any other jurisdiction, within the past five years.
- (3) Making a false statement on a permit application.

Erogenous areas means the genitals and the nipples and areolae.

Massage means the treatment, for compensation, of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body, unless the massage is excluded from regulation by section 18-142.

Massage establishment means any fixed place of business where massages are administered to a client, unless the place is excluded from regulation by section 18-142. The term "massage establishment" shall include but shall not be limited to massage parlors, health clubs, sauna baths and similar types of businesses

Massage therapist means any individual certified as a massage therapist by the Board of Nursing of the commonwealth.

Town means the Town of Dumfries, Virginia.

(Code 1990, § 7-276; Code 2006 §18-140)

Cross reference— Definitions and rules of construction, § 1-2.

Sec. 18-142. - Exclusions.

The provisions of this article do not apply to the following massages, and such massages are expressly excluded from the requirements of this article:

- (a) A massage administered only to the scalp, face, neck, shoulders, arms, hands, and/or the feet.
- (b) A massage of the upper body while the client is fully clothed and seated in a chair.
- (c) A massage administered in a hospital or medical clinic, or in the office of a physician, chiropractor, osteopath or physical therapist licensed by the commonwealth.
- (d) A massage administered in a nursing home, convalescent care facility, assisted-living facility, progressive care facility or life care facility.
- (e) A massage administered by a physician, chiropractor, osteopath, physical therapist or nurse, licensed by the commonwealth, in any location.
- (f) A massage administered at an organized public event, such as a health fair or sporting event, which is open for participation or viewing by the general public.
- (g) A massage administered at a school which offers a massage therapy program that has received programmatic approval from the state board of education, office of proprietary schools, or that has been certified or approved by the state board of education, office of proprietary schools or the state council of higher education; provided, however, that this exclusion applies only if the individual administering the massage is a student enrolled at the school and receives no compensation for doing so.

(Code 1990, § 7-277; Code 2006 §18-141(d))

Sec. 18-144—18-149. Reserved.

DIVISION 2. - PENALTIES AND ENFORCEMENT

Sec. 18-150. - Violations.

Any person violating any provision of this article shall be guilty of a class 1 misdemeanor.

(Code 1990, § 7-276; Code 2006 §18-141(e))

Sec. 18-151. - Right of entry to enforce provisions.

The Chief, the zoning administrator and the building official, or their duly authorized agents, are hereby authorized to enter, examine and survey, during business hours, any premises in the Town for which a massage establishment permit has been issued, pursuant to this article, for the purpose of inspection and to enforce the provisions of this article. The Chief will make best

efforts to inspect each massage establishment at least one time per year to determine whether it is being operated in compliance with this Code. This section shall not restrict or limit the right of entry vested in any law enforcement agency.

(Code 1990, § 7-279; Code 2006 §18-143)

Sec. 18-152. - Revocation or suspension of permits.

- (a) Grounds for revocation. Grounds for revocation of any permit granted under this article exist if the permittee, operator or manager has committed any disqualifying offense or repeatedly has had a permit issued under this Article suspended.
- (b) Grounds for suspension. Grounds for suspension of any permit granted under this article exist if the permittee has failed to comply with any provisions of this article, other than those which mandate revocation.
- (c) The Chief or any person with a right of entry under section 18-151 may order the suspension of the permit with or without notice. The order shall set forth the reasons for the suspension. A copy of the suspension order shall be hand delivered or mailed, by certified mail, to the permittee's last known address. The chief may end a suspension at any time if the reason for the suspension is corrected. Any appeal shall be filed by the permittee with the Town police department within 30 days after a permittee receives the suspension order and shall specify the grounds for appeal. The city manager shall hold an appeal hearing as promptly as practicable and in no event more than 60 days after the appeal is filed.

(Code 1990, § 7-294; Code 2006 §18-173)

Section 18-153—18-159. Reserved.

DIVISION 3. - MASSAGE THERAPIST PERMIT

Sec. 18-160. - Permit required.

- (a) It is unlawful for the owner, operator or manager of any massage establishment to allow any person who does not have the permit required by this section to administer any massage in the establishment.
- (b) The Chief shall not issue a massage therapist permit to any person who is not certified by the board of nursing of the commonwealth, as a massage therapist.

(Code 1990, § 7-291, Code 2006, § 18-170)

State law reference— Certification of massage therapists, Code of Virginia, § 54.1-3029.

Sec. 18-161. - Permit application, duty to update.

Each application for a massage therapist permit shall be upon a form prepared by the Chief. The applicant shall provide full answers to all questions on the application under oath. The completed application shall contain the following information, as well as other information which the Chief deems necessary to properly evaluate the application:

- (a) The applicant's full name, names by which the applicant previously was known, date and place of birth, current residential and business addresses and telephone numbers, and e-mail address.
- (b) A copy of the applicant's massage therapist certification from the board of nursing of the commonwealth.
- (c) The applicant's personal characteristics, such as, height, weight, eye color, hair color, sex and race.
- (d) The names and addresses of all massage establishments where the applicant has been employed as a massage therapist within the past three years.
- (e) Whether the applicant currently holds or previously held a permit or license to offer or administer massages anywhere in the state or in any other state. If the applicant holds or has held any such permit or license, the applicant shall provide the license or permit number and the identity of the issuing authority, and whether such permit or license has ever been revoked or suspended and the reason.
- (f) The results of a criminal record search from the computerized criminal history (CCH) data base and a complete set of the applicant's fingerprints.
- (g) One full-face photograph, in a size designated by the chief.
- (h) The application fee of \$50.00. The fee is in addition to any business or occupation or occupation license tax imposed by the Town and any other taxes or fees which may be required to engage in the business.

(Code 1990, §7-292; Code 2006 §18-171)

Sec. 18-162. - Issuance or denial.

- (a) The Chief shall act upon the application for a massage therapist permit within 21 days from the date the Chief receives the completed application.
- (b) If the Chief determines from the information contained in the permit application and from the Chief's investigation that the applicant has committed no disqualifying offenses and that the applicant is otherwise qualified, under this division, to administer massage therapy in the Town, the chief shall issue the permit. Each permit issued by the chief shall be the property of the Town and it shall be returned to the Chief in the event the permit is suspended or revoked in accordance with Section 18-152 or section 18-164.
- (c) If the Chief determines from the information contained in the permit application and from the Chief's investigation that the applicant has committed one or more disqualifying offenses or is otherwise unqualified under this division to administer massage therapy in the Town, the Chief shall deny the application.

(Code 1990, §7-293; Code 2006 §18-172)

Sec. 18-163. - Term.

A massage therapist permit shall be valid for one year from the date of issuance, unless sooner suspended or revoked. Within 30 days before the expiration date, a permitted massage therapist may apply for a new permit.

(Code 1990, §7-293; Code 2006 §18-171(d))

Sec. 18-164. - Validity of permit dependent upon validity of state certification.

The validity of a massage therapist permit issued under this division is dependent upon the validity of the state certification as a massage therapist. Suspension of a massage therapist's certification by the commonwealth shall result in the automatic suspension of the permit issued under this division. Revocation of a massage therapist's certification by the commonwealth shall result in the automatic revocation of the permit issued under this division.

Sec. 18-165. - Nontransferability.

Massage therapist permits are not transferable.

Sec. 18-166. - Permit display.

Every person to whom a massage therapist permit has been granted shall display the permit while in a massage establishment.

(Code 1990, §7-295; Code 2006 §18-174)

Sec. 18-167—18-169. Reserved.

DIVISION 4. - MASSAGE ESTABLISHMENT PERMIT

Sec. 18-170. - Permit required.

- (a) It is unlawful for any person to own or operate a massage establishment in the Town, unless they have a valid massage establishment permit issued by Director of Prince William County Health District.
- (b) It is unlawful for any person to own or operate a massage establishment in the Town, unless they have a valid massage establishment permit issued by Town of Dumfries Clerk.
- (c) The Clerk shall not issue a permit for any person to own or operate a massage establishment in the Town unless they have valid massage establishment permit issued by the Director.

Sec. 18-171. - Permit application; duty to update.

Each application for a massage establishment permit shall be on a form prepared by the Clerk. The completed application shall consist of the following information, as well as other information that the Clerk deems necessary to properly evaluate the application. The application

process shall include:

- (a) A valid massage establishment permit issued by the Director.
- (b) A description of the facilities and services to be available on the premises of the proposed establishment.
- (c) The location and mailing address of the establishment.
- (d) The name under which the establishment will operate.
- (e) The applicant(s) full name, names by which the applicant previously was known, date and place of birth, incorporation or organization, and current residential and business addresses and telephone numbers, as applicable.
- (f) Each application shall be accompanied by a fee of \$25.00.
- (g) The name of the operator or manager of the massage establishment. If the operator or manager of the massage establishment is not an applicant, then the operator or manager must provide the information required in this section relative to the applicant.

Sec. 18-172. - Issuance.

The Clerk shall act upon the application for a massage establishment permit within 14 days from the date the Clerk receives a completed application.

Sec.18-173. - Term.

A massage establishment permit shall be valid for one year from the date of issuance, unless sooner suspended or revoked. Within 65 days before the expiration date, a permitted massage establishment may apply for a new permit.

Sec. 18-174. - Validity of permit dependent upon validity of County permit

The validity of a massage establishment permit issued under this division is dependent upon the validity of the permit issued by the Director. Suspension of a massage establishment permit by the Director shall result in the automatic suspension of the permit issued under this division. Revocation of a massage establishment permit by the Director shall result in the automatic revocation of the permit issued under this division.

Sec. 18-175. - Permit transfer or change of location.

- (a) Massage establishment permits are not transferable from one person or one business entity to another whether by sale, lease, merger, or otherwise.
- (b) A change of location of a massage establishment may be approved by the Clerk and the establishment's permit transferred to the new location, provided the establishment continues to comply with all applicable provisions of this Code and the applicable Code of Prince William County governing massage establishments.

Sec. 18-176. - Permit display.

Every person or business entity to whom a massage establishment permit is issued shall display the permit in a conspicuous place in the massage establishment, so it may be readily seen by persons entering the premises.

Sec. 18-177—181-179.Reserved.

DIVISION 5. - MINIMUM STANDARDS

Sec. 18-180. - Compliance with zoning provisions.

Massage establishments shall be located in a proper zoning district, as specified in this Code.

Sec. 18-181. - Requirements for massage establishments.

- (a) All massage establishments shall comply with all applicable provisions of the uniform statewide building code, including those provisions relating to lighting, ventilation, toilet facilities and accessibility.
- (b) Nondisposable tools of the trade shall be disinfected after use upon one client.
- (c) Walls, ceilings, floors, bathrooms, and all other physical facilities for the establishment shall be kept in good repair and maintained in a sanitary condition.
- (d) All towels and tissue, all sheets or other coverings shall be used singularly for each client and discarded for laundry or disposal immediately after use.

Sec. 18-182. - Cleanliness of therapists.

Massage therapists shall cleanse their hands thoroughly with soap and hot running water immediately before administering each massage.

Sec. 8-183. - Massaging, touching, exposing erogenous areas.

- (a) It is unlawful for any person in a massage establishment to touch, with any part of such person's body or with any object, another person's clothed or unclothed erogenous area.
- (b) It is unlawful for any person, in a massage establishment to fail to conceal that person's erogenous areas with a fully opaque covering while in the presence of others.

This ordinance shall become effective on October 1, 2011.

BY ORDER OF COUNCIL:

Fred E. Yohey, Jr., Mayor
On Behalf of the Town Council of

Dumfries, Virginia

ATTEST:

Retta Ladd, Town Clerk

Date: _____

Meeting: _____

Ord. No. _____

MOTION: _____

SECOND: _____

Votes

Ayes: _____

Nays: _____

Absent From Vote: _____

Absent From Meeting: _____

CERTIFIED COPY

Retta Ladd, Town Clerk