



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of November 19, 2011**

DATE: October 20, 2011

SUBJECT: Adopt Repeal of § 11-42.1 and Chapter 49 of the Arlington County Code (Massage Regulation)

C. M. RECOMMENDATION:

Adopt Repeal of § 11-42.1 and Chapter 49 of the Arlington County Code (Massage Regulation)

ISSUES: This is a request to adopt ordinances (**Attachments 1 and 2**) repealing § 11-42.1 and Chapter 49 of the County Code.

SUMMARY: Arlington County's local ordinance related to massage licensing, passed in 1975, has not been updated to reflect massage licensing changes in the Code of Virginia and Virginia Administrative Code that have been made in recent years. Current state law grants authority to the Virginia Board of Nursing to regulate massage therapy. There is no express authority for the local permitting of massage technicians in the Code of Virginia or in Board of Nursing regulations. County staff recommends repealing § 11-42.1 and Chapter 49 of the Arlington County Code as advertised on October 25 and November 1, 2011. The repeal is designed to ensure consistency with state law by eliminating local permitting of massage therapists and massage technicians, and ceasing the licensing of massage parlors as a unique business type. These repeals will not affect state licensing of massage therapists or general business licensing of massage parlors by the Arlington County Commissioner of the Revenue.

BACKGROUND: Arlington has had local laws regulating massage activities since 1975 as part of efforts to professionalize massage practitioners and to control prostitution that was taking place at massage parlors. The current ordinances require massage therapists and massage technicians to obtain permits from the County before practicing massage in the County, and § 11-42.1 requires massage parlors to obtain unique business licenses from the Arlington County Commissioner of the Revenue. Massage therapists are trained in underlying principles of anatomy and physiology by approved schools of massage, and are licensed by the Virginia Board of Nursing. Massage technicians, in contrast, have no formalized training and under current

County Manager:

BMD/kmA

County Attorney:

BRC

[Signature]

20.

Staff: Evelyn Poppell, Department of Human Services

Arlington County ordinances are restricted to performing massage on persons of the same gender as the respective technician.

Since the 1970s, the practice of massage therapy has changed and expanded greatly, evolving into an established medically-related practice. In 1997, as a result of amendments to the Code of Virginia, the Commonwealth, through the Board of Nursing, began regulating massage therapy. "Massage therapy" is now defined by the Code of Virginia to mean the treatment 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.

The Code of Virginia now vests sole authority to regulate massage *therapists* with the Board of Nursing, and Arlington's local regulation of massage therapists is superfluous. In addition to Arlington, Fairfax County, Alexandria, and Loudoun County regulate massage therapists. County staff is confident that regulation by the Virginia Board of Nursing is sufficient to provide oversight of massage therapists practicing in Arlington County.

The Code of Virginia and massage-related aspects of the Virginia Administrative Code do not address massage technicians, and Arlington and Loudoun counties are the only counties in Virginia that issue local permits to massage *technicians*. The Virginia Board of Nursing does not recognize or license massage technicians. There is no express enabling authority that permits counties or other localities to license massage *technicians*.

DISCUSSION: With the evolution of the field of massage therapy, the Commonwealth began regulating massage therapy in 1997 to establish minimum professional competency across the state. Education, training and skill development are necessary for the safe practice of massage therapy. Current Virginia law requires testing and national certification of massage therapists who have completed at least 500 hours of training through an approved program, evidence of continuing education for continued certification, and verification that the individual has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-50-90. Statewide regulation reduces the risk of physical and/or emotional harm to consumers receiving massage therapy from untrained or undertrained practitioners.

Some of the knowledge and skills required in the practice of massage therapy overlap with those of other health care occupations most notably Physical Therapy and Chiropractic Medicine. The County does not require local licensure of practitioners in these fields in the County. Rather, the County accepts the State's licensing of such practitioners. Ceasing local licensure of massage therapists would ensure the least governmental restriction possible while continuing to provide for the public's protection.

The Commissioner of the Revenue is expected to continue to license the businesses of massage therapists, although with the repeal of § 11-42.1 they will be treated as general businesses rather than a specific unique type of business. Notwithstanding the repeal of Chapter 49, the Police Department and other law enforcement officers will continue to enforce all applicable laws and

regulations and prosecute illegal activities, without interfering with state-licensed massage therapists.

The proposed repeal of § 11-42.1 and Chapter 49 of the County Code was advertised on October 25 and November 1, 2011. The advertisement of the proposed repeal was considered and approved by the County Board on October 15, 2011. As part of outreach efforts, County staff sent letters to all currently licensed massage therapists, massage technicians and licensed massage establishments regarding the proposed repeal.

FISCAL IMPACT: Revenue loss from ceasing to issue permits to massage therapists and massage technicians will be nominal. Approximately 75 permits are issued annually at \$50 per permit, for a total of \$3,750 in revenue.

AN ORDINANCE TO REPEAL § 11-42.1 OF THE CODE OF ARLINGTON COUNTY, VIRGINIA, CONCERNING THE LICENSING OF MASSAGE PARLORS, TO TAKE EFFECT UPON ENACTMENT.

- I. **BE IT ORDAINED** that Chapter 11, Article II, Section 42.1, of the Arlington County Code is repealed in its entirety:

Chapter 11

LICENSES

ARTICLE II. SPECIAL TAX PROVISIONS

* * *

~~§ 42-1. Massage Parlors.~~

~~A. Every person operating a massage parlor shall pay an annual license tax of five thousand dollars (\$5,000.00) which is not subject to proration.~~

~~B. A massage parlor is defined as any place where manipulation of body tissues for remedial or hygienic purposes, or any other purpose, is conducted and the owners and employees individually do not hold a current valid massage therapist certification under § 54.1-3029 of the Virginia Code or under the County Code.
(Ord. No. 96-17, 12-7-96)~~

* * *

- II. The remaining sections and subsections of Chapter 11 of the Code of Arlington not amended hereby shall remain in effect as previously enacted.

AN ORDINANCE TO REPEAL CHAPTER 49 (MESSAGE REGULATION) OF THE CODE OF ARLINGTON COUNTY, VIRGINIA, CONCERNING THE REGULATION OF MESSAGE THERAPY, AND THE PERMITTING OF MESSAGE THERAPISTS AND MESSAGE TECHNICIANS, TO TAKE EFFECT UPON ENACTMENT.

I. **BE IT ORDAINED** that Chapter 49, of the Arlington County Code is repealed in its entirety:

Chapter 49

MESSAGE REGULATION

*** * ***

~~§ 49-1. General Policy.~~

~~It is hereby declared to be the policy of the County of Arlington, in the exercise of its police power for the protection of the safety, health and welfare of its citizens to provide for the licensing and regulation of massage establishments, massage technicians, massage therapists, and outcall massage services. (6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83)~~

~~§ 49-2. Definitions.~~

~~The following phrases and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:~~

~~*Exemptions:* This chapter shall not apply to the following individuals while engaged in the personal performance of the duties of their respective professions:~~

- ~~A. Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the Commonwealth of Virginia;~~
- ~~B. Any person who holds a license to practice professional nursing, issued by the Commonwealth of Virginia;~~
- ~~C. Barbers and beauticians who are duly licensed under the laws of the commonwealth except that this exemption shall apply solely to the massaging of the neck, face, scalp, shoulders or hair;~~

~~"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 for pay.~~

~~"Massage establishment" means any establishment having a fixed place of business where massages are administered for pay.~~

~~"Massage technician" means any person who administers a massage to another person for pay, and who holds a permit as a massage technician, and who has not made a study of the underlying principle of anatomy and physiology as generally included to a regular course of study by a recognized and approved school of massage.~~

~~"Massage therapist" means any person who practices or administers a massage to another person for pay and applies the underlying principles of anatomy and physiology as generally included in a regular course of study by a recognized and approved school of massage to wit: the art of body massage, either by hands or with a mechanical or vibratory apparatus, for the purpose of body massaging, reducing or contouring; the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower or cabinet baths. Variations of the following procedures are employed: touch, stroking, friction, kneading, vibrations, percussion and medical gymnastics. Massage therapists shall not diagnose or treat diseases, nor practice spinal or other joint manipulations, nor prescribed medicine or drugs.~~

~~"Outcall massage service" means any business, a function of which is to engage in or carry on massages at a location designated by the customer, client, massage technician, or some other person rather than at a massage establishment as defined herein.~~

~~"Sexual or genital part(s)" means the penis, genitals, pubic area, anus, perineum or vulva of any person.~~

~~_____ Nor shall this chapter apply to persons employed at a hospital, nursing home or medical clinic while such persons are engaged in the personal performance of their employment.
(6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83; Ord. No. 88-4, 2-20-88)~~

~~§ 49-3. Permit Required for Massage Technician or Massage Therapist.~~

~~_____ A. _____ It shall be unlawful for any massage technician or massage therapist to administer or to offer to administer a massage without a valid nonsuspended permit as either a massage technician or as a massage therapist issued pursuant to this chapter.~~

~~_____ B. _____ It shall be unlawful for any person to establish, maintain or operate a massage establishment or outcall massage service in which a massage technician or massage therapist, who does not have a valid nonsuspended permit issued pursuant to this chapter, administers massages.
(6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83)~~

~~§ 49-4. Issuance of Permit.~~

~~Any person desiring a permit to perform the services of a massage technician or massage therapist shall make application to the County Manager or his designee. Each such application shall be accompanied by an investigation fee of fifty dollars (\$50.00), payable to the Treasurer of Arlington County. Each such application shall contain the name, address, telephone number, last previous address, date of birth, place of birth, height, weight, 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 been convicted, pleaded nolo contendere, or suffered a forfeiture within the last five (5) years on a charge of violating any provision included in §§ 18.2-344 through 18.2-361, 18.2-365 through 18.2-387, 18.2-390, or 18.2-391, Code of Virginia (1950), as amended, which laws relate to sexual offenses or on a charge of violating a similar law of any jurisdiction. All applicants must present a certificate from a medical doctor stating that the applicant within thirty (30) days before the application has been examined and found free of any identifiable disease which would create a substantial medical risk for the massage subject.~~

~~Each applicant for a permit as a massage therapist must furnish a diploma or certificate of graduation from a recognized school or other recognized institution of learning wherein the method, occupation and work of massage therapists is taught. A school or institution is considered recognized if it has for its purpose in respect to massage therapy the teaching of the theory, method, profession, or work of massage therapists and requires a resident course of study of five hundred (500) or more hours before the student is granted a diploma or certificate of graduation from the school or institution showing the successful completion of the course of study. To be considered recognized, a school must impose standards for the granting of a diploma or certificate that are reasonably calculated to demonstrate that a student of its course meets the minimum standards of skill and knowledge required to perform the work of a massage therapist. The County Manager or his designee shall maintain a list of massage schools in the United States which meet the minimum standards of this section. Upon the request of any person, the County Manager shall investigate schools not on the list to determine whether they should be added to it. The programs of schools and institutions not requiring actual class attendance shall not be considered "recognized." The County Manager shall have the right to confirm the fact that an applicant has actually attended required classes at and received a diploma or certificate from a school or institution which meets these standards.~~

~~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 any application or revocation of a permit."~~

~~Each applicant shall be photographed and have his or her fingerprints taken, which fingerprints and~~

photographs shall constitute part of the application.

The permits shall be valid for a period of two (2) years, and they may be renewed for additional two (2) year periods upon the filing of a new application and payment of a twenty-dollar (\$20.00) investigation fee. All provisions of this chapter shall apply to renewals in the same manner as they apply to applications.

(6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83; Ord. No. 94-3, 3-12-94; Ord. No. 04-01, 1-10-04)

§ 49-5. Investigation of Applicant for Massage Technician Permit; Grounds for Denial of Application.

Upon receipt of the application fee as provided for in the preceding section, the Chief of Police shall make, or cause to be made, a thorough investigation of the criminal record of the applicant.

The Chief shall deny any application for a permit under this chapter after notice and hearing if the Chief finds that the applicant is less than eighteen (18) years of age; has been convicted, pleaded nolo contendere, or suffered a forfeiture within the last five (5) years on a charge of any provision included in §§ 18.2-344 through 18.2-361, 18.2-365 through 18.2-387, 18.2-390 or 18.2-391, Code of Virginia (1950), as amended, which laws relate to sexual offenses or on a charge of violating a similar law of any other jurisdiction.

The making of a false statement on the application as provided for in § 49-3 of this Code shall also be grounds for denial of this permit.

Notice of the hearing before the Chief of Police 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 (5) days prior to the date set for the hearing.

The Chief of Police shall submit his decision to the applicant within five (5) days of his decision or within thirty (30) days of the hearing whichever is sooner.

(6-14-75; 5-31-80)

§ 49-6. Revocation of Massage Technician and Massage Therapist Permits.

The County Manager or his designee shall revoke the permit of any person after notice and hearing if the Manager finds that such person is less than eighteen (18) years of age, has within the last five (5) years been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision included in §§ 18.2-344 through 18.2-361, 18.2-365 through 18.2-387, 18.2-390 or 18.2-391, Code of Virginia (1950), as amended, which laws relate to sexual offenses, or on a charge of violating any provision of this chapter. The permit shall also be revoked by the Manager if he finds after notice and hearing that any permit holder has made a false statement on the application provided for in § 49-3 hereof.

Notice of the hearing before the Manager for revocation of the permit shall be given in writing to the permit holder at the last known address of the permit holder which shall be mailed by certified mail to the permit holder at least eight (8) days prior to the hearing and no more than thirty (30) days prior to the hearing. Said notice shall set forth the grounds of the proposed revocation and the time and place of the meeting.

At the hearing, the permit holder may be represented by counsel, may cross-examine witnesses, and may present evidence in his or her favor.

The Manager shall submit his decision to the permit holder within thirty (30) days of the hearing.

(6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83)

§ 49-7. Unlawful Acts of Massage Technician or Massage Therapist.

A. It shall be unlawful for a massage technician or massage therapist to willfully perform any of the following acts:

- ~~1. Placing of hand or hands upon, touching with any part of the body, fondling in any manner, or massaging a sexual or genital part, or any portion thereof, of any other person.~~
 - ~~2. Exposing of a sexual or genital part, or any portion thereof, to any other person.~~
 - ~~3. Failing to conceal, with a fully opaque covering in the presence of any other person, the sexual or genital parts of such massage technician.~~
- ~~B. It shall be unlawful for any massage technician to massage a person of another sex or to offer to massage a person of another sex. It shall be lawful for a massage therapist to massage a person of another sex or to offer to massage a person of another sex.~~
- ~~C. It shall be unlawful for any person owning, operating or managing a massage establishment or outcall massage service knowingly to cause, allow, or permit any agent, employee, or any other person under his or her control or supervision, to perform such acts prohibited in subsections A.1, A.2, A.3 or B of this section.
(6-14-75; 5-22-76; 5-31-80; Ord. No. 83-27, 9-24-83; Ord. No. 88-4, 2-21-88)~~

~~§ 49-7.1. Requirements for Massage Establishments.~~

- ~~A. Minimum lighting shall be provided in accordance with the Uniform Building Code, and, additionally, at least one (1) working artificial light of not less than seventy-five (75) watts shall be provided in each enclosed room or booth where massage services are being rendered.~~
- ~~B. Minimum ventilation shall be provided in accordance with the Uniform Building Code.~~
- ~~C. Adequate equipment for disinfecting and sterilizing any instruments used for massage shall be provided.~~
- ~~D. Hot and cold running water shall be provided.~~
- ~~E. Adequate dressing, bathing, and toilet facilities shall be provided for patrons of each gender.~~
- ~~F. All walls, ceilings, floors, steam rooms, and all other physical facilities for the establishment shall be kept in good repair and maintained in a sanitary condition.~~
- ~~G. Clean towels and linens shall be provided for patrons receiving massage services. No common use of towels or linens shall be permitted.
(Ord. No. 83-27, 9-24-83)~~

~~§ 49-8. Posting a Copy of this Chapter and a Summary of its Key Provisions Prepared by the County Manager.~~

~~Every person owning, operating or managing a massage establishment shall post a copy of this chapter and a summary of its key provisions, prepared by the County Manager, in a conspicuous place in the massage establishment so that it may readily be seen by persons entering the premises.
(6-14-75; Ord. No. 83-27, 9-24-83)~~

~~§ 49-9. Display of Permit.~~

~~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 operates so that it is clearly visible to the technician's customers or clients.
(6-14-75; 5-31-80)~~

~~§ 49-10. Inspections.~~

~~Inspections of massage establishments shall be made at periodic intervals by plainclothes police officers, who shall display their badges, to determine if all massage technicians have valid permits.
(6-14-75, Ord. No. 83-27, 9-24-83)~~

~~§ 49-11. Penalties.~~

~~Any person violating the provisions in this chapter shall, upon conviction, be punished as provided in § 1-6 of this Code.
(6-14-75)~~

~~§ 49-12. Severability.~~

~~Should any clause, sentence, paragraph or part of this chapter or the application thereof to any person or circumstance, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair, or invalidate the remainder of this chapter or the application of such provisions to other persons or circumstances, but shall be confined in its application to the clause, sentence, paragraph or part thereof directly involved in the controversy in which said judgment shall have been rendered and the person or circumstances involved.
(6-14-75)~~

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From: John R. Porter [<mailto:jrporters@gmail.com>]
Sent: Sunday, November 06, 2011 7:54 AM
To: Environmental Health
Subject: Repeal of Arlington County Massage Regulations

I whole-heartedly endorse the repeal of the Arlington County massage regulation.

I have been a nationally-certified massage therapist for 10 years, and have had to go through the onerous and redundant process of county certification several times. I see no benefit to myself or to my clients from this process.

Regards,

John R. Porter
3835 9th St. N, #806E
Arlington, VA 22203
(703) 585-3228
JRPorterMS@gmail.com

From: Lauren Muser Cates [<mailto:lauren@lighthold.org>]

Sent: Monday, November 07, 2011 11:55 PM

To: Environmental Health

Subject: Thank you

To Whom It May Concern:

My name is Lauren Cates. I have been a practicing massage therapist in Arlington for almost 7 years. In addition, I manage a program wherein massage therapists have the opportunity to work providing massage therapy at two area hospitals.

I am encouraged and delighted at the mere proposition of the repeal of Chapter 49. The repeal will go a long way toward not only simplifying my own professional life, but also toward sending a clear message to the community that massage is, in fact, a legitimate medical-type intervention.

Thank you for helping us bring massage therapy into the 21st century.

sincerely,
Lauren Cates

From: Anne [<mailto:mrsbellycheck@yahoo.com>]
Sent: Wednesday, November 09, 2011 9:53 AM
To: Environmental Health
Subject: massage permit

Glad to hear the Arlington permit is going away. It treats professional massage therapists like criminals. Having my fingerprints taken year after year, FBI background checks and so many months to process the permits left me feeling like Arlington did not want me working for health in their county. Plus, all those requirements didn't prove that I was a legitimate therapist anyway.

I stopped practicing massage in Arlington after almost a decade since I was sick and tired of the permit. I personally know 7 therapists who did the same.

Thank you for recognizing the Virginia Board of Nursing and National Certification Board are capable of deeming someone a professional Massage Therapist. They are more qualified than a public health department in this matter. I apologize for the negative tone to this e-mail but this has deeply affected my livelihood for a long time.