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Introduction and first reading:

01/08/2008

Public hearing:

01/12/2008

Second reading and enactment:

01/12/2008

INFORMATION ON PROPOSED ORDINANCETitle

AN ORDINANCE to amend and reordain Chapter 4.2 (MASSAGE REGULATIONS) of Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of the Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance amends the City code to permit, subject to licensing and regulation by the City, certified massage therapists to provide services at hotels in the City.

SponsorStaff

Charles Konigsberg, Health Director
David Baker, Chief of Police
Faroll Hamer, Director, Planning and Zoning
Christopher Spera, Assistant City Attorney

Authority

§§ 2.04(a), 2.04(z), Alexandria City Charter

Estimated Costs of Implementation

See memorandum from the City Manager

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Chapter 4.2 (MASSAGE REGULATIONS) of Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 4.2 of Title 11 of the Code of the City of Alexandria, Virginia, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 11-4.2-1 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning given below, except in those instances when the context clearly indicates a different meaning.

(1) *Care facility.* Any place or building in which (i) medical, surgical, nursing or other health services are furnished by duly licensed individuals for the prevention, diagnosis or treatment of human disease, pain, injury or other physical condition to two or more unrelated sick, injured, disabled or aged persons, or (ii) convalescent or similar care is furnished by duly licensed individuals to two or more unrelated sick, injured, disabled or aged persons.

(2) *Director.* The director of public health of the city or his duly authorized representative.

(3) *Massage.* The treatment of 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 one or more parts of the body with hand, or any instrument, for compensation.

(4) *Massage establishment.* Any establishment in the city where massages are provided or administered, or which holds itself out to the public as a place where massages are provided or administered; provided, that this definition shall not include a hotel, hospital, nursing home or medical clinic, a care facility, the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath, barbershop or a beauty salon.

(5) *Massage therapist.* Any person possessing a valid massage therapist permit issued pursuant to this chapter.

(6) *Police chief.* The chief of police of the city or his duly authorized representative.

(7) *Public gathering.* Any event occurring in the city that is open to the general public and involves more than 50 persons.

(8) *Residence.* A place which an individual considers his permanent abode and in which he either has resided during at least the prior six months or intends to reside during at least the next six months; this term shall not include any place which provides transient lodging such as hotels, inns, apartment house hotels, hostelries, tourist homes or houses, motels, and rooming houses.

(9) *Seated massage.* A massage provided to the upper human body while the massage recipient is fully clothed and seated in a chair.

(10) *Sexual or genital part.* The genitals, pubic area, anus or perineum of any person, or the vulva or breasts of a female.

1 Sec. 11-4.2-2 Provision of massages.

2
3 (a) Except as provided in subsection (b), it shall be unlawful for any person to provide or
4 administer a massage at any location in the city.

5 (b) Only the following persons, under the following conditions, may provide or
6 administer a massage in the city:

7 (1) *massage therapists*:

8 (i) at or within a massage establishment;

9 (ii) at the regular place of business of the massage recipient between the hours of
10 9:00 a.m. and 6:00 p.m.; provided, that a therapist may only provide a seated massage at
11 this location and may do so only if he possesses his massage therapy permit while
12 performing the seated massage;

13 (iii) at a public gathering; provided, that the therapist possesses his massage
14 therapy permit while performing massages at such a gathering;

15 (iv) at a care facility; provided, that the therapist possesses his massage therapy
16 permit while performing massages at this location; and

17 (v) at the residence of the massage recipient between the hours of 6:00 a.m. and
18 9:00 p.m.; provided, that the therapist holds a valid home massage permit issued pursuant
19 to this chapter, possesses that permit and his massage therapy permit while performing
20 massages in a residence, and provides massages at the residence only to individuals
21 identified in his home massage permit.

22 (vi) at a hotel having 45 or more guest rooms, which offers massage services to
23 its registered overnight guests in the normal course of the hotel's business, either in the
24 hotel room of the guest receiving the massage, or at a salon, day spa, fitness center or like
25 facility located within the hotel, between the hours of 6:00 a.m. and 9:00 p.m.; provided,
26 that the therapist carries his massage therapy permit on his person while performing
27 massages in guest rooms.

28 (2) *persons who are certified as a massage therapist by, and are in good standing with,*
29 *the Virginia Board of Nursing:*

30 (i) at the regular place of business of the massage recipient between the hours of
31 9:00 a.m. and 6:00 p.m.; provided, that the board certified therapist may only provide a
32 seated massage at this location and may do so only if he possesses a picture identification
33 while performing the seated massage; and

34 (ii) at a public gathering; provided, that the board certified therapist possesses a
35 picture identification while performing massages at such a gathering; and

36 (3) *persons*:

37 (i) at a hospital, nursing home or medical clinic, or at the office of a duly licensed
38 physician, surgeon, physical therapist, chiropractor or osteopath; or

39 (ii) at a barbershop or beauty salon; provided, that, at this location, the person
40 may only provide a massage to the scalp, face, neck or shoulders of the massage
41 recipient.
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1 Sec. 11-4.2-3 Massage therapists; issuance of massage therapist permits.

2
3 (a) Any person who desires to provide or administer massages in the city as a massage
4 therapist shall possess a valid massage therapist permit issued in accordance with this section. A
5 person possessing a massage therapist permit issued under this section who, following receipt of
6 the permit, does not continue to meet the requirements set out in subsection (b) below shall not
7 be considered to be in possession of a valid massage therapist permit.

8 (b) In order to be eligible for a massage therapist permit, the applicant shall:

9 (1) be certified as a massage therapist pursuant to sections 54.1-3000 and 54.1-3029 of
10 the Code of Virginia (1950), as amended, by, and be in good standing with, the Virginia Board
11 of Nursing, or have a valid provisional certificate to practice massage therapy which has been
12 issued by the Board of Nursing pursuant to its regulations;

13 (2) own, or be employed at or under contract with (i) a massage establishment for which
14 a permit has been issued under section 11-4.2-5, or (ii) a hotel in the City of Alexandria
15 described in section 11-4.2-2(b)(1)(vi) of this code; and

16 (3) not have been convicted of, or pleaded nolo contendere or suffered a forfeiture in
17 relation to, any of the offenses identified in sections 18.2-344 through 18.2-361 or sections 18.2-
18 372 through 18.2-387 of the Code of Virginia (1950), as amended, which sections relate to
19 sexual offenses, prostitution, obscenity and similar offenses, or any similar offenses under the
20 laws of another jurisdiction.

21 (c) All applicants for a massage therapist permit shall apply to the director. The
22 application shall be on a form prepared by the director and shall be accompanied by an
23 application fee of \$50, payable to the director of finance. The application shall contain the name,
24 address, telephone number, date of birth, place of birth, and height and weight of the applicant,
25 the applicant's Virginia Board of Nursing certified massage therapist number or provisional
26 certification number, and the address and telephone number of the massage establishment or
27 hotel which the applicant owns, is employed at, or is under contract with. The applicant shall
28 also state on the application all criminal offenses for which he has been convicted or in relation
29 to which he has pleaded nolo contendere or suffered a forfeiture, including the offenses
30 identified in subsection (b).

31 (d) The application to be filed under this section shall state thereon, "It is unlawful for
32 any person to make a false statement on this application and the discovery of a false statement
33 shall constitute sufficient grounds, in and of itself, for the denial of an application or revocation
34 of a permit, or for the imposition of a fine or imprisonment or both." It shall be unlawful for a
35 person to make a false statement on an application filed under this section.

36 (e) The director shall refer the applicant to the chief of police to be photographed and
37 fingerprinted. The photograph and fingerprints shall constitute part of the application. The chief
38 of police shall, to the extent permitted by law, forward the applicant's fingerprint cards to the
39 Virginia state police for purposes of conducting a review of the applicant's criminal history.
40 After he has completed his investigation of the applicant, the chief of police shall return the
41 application to the director, together with the results of his investigation.

42 (f) The director shall deny any application for a massage therapist permit if the director
43 finds that the applicant does not satisfy the requirements set out in subsection (b). The making of
44 a false statement on an application shall also be grounds for denial of the application.

45 (g) The decision of the director on an application under this section shall be conveyed to
46 the applicant in writing, and shall be sent by certified mail to the applicant's last known address.

1 If the director denies the application, he shall state in his written decision the grounds for the
2 denial and shall notify the applicant of his right to request a hearing, as provided in subsection
3 (h). If the director approves the application, he shall issue, or cause to be issued, a massage
4 therapist permit to the applicant.

5 (h) An applicant whose application under this section has been denied may request a
6 hearing before the director. Such request, which shall not stay the effect of the director's initial
7 decision, shall be in writing and shall be filed with the director within 10 days of the date on
8 which the director's decision was sent to the applicant. The director shall schedule a hearing on a
9 date and at a time that is mutually convenient to the applicant and the director, and shall notify
10 the applicant in writing of the date, time and place of the hearing. Within 10 days of the hearing,
11 the director shall send a copy of his decision by certified mail to the applicant at his last known
12 address. This decision shall be final and conclusive. In the event an applicant does not timely
13 request a hearing on the director's initial decision to deny his application, or requests but does not
14 attend the hearing, the initial decision shall be final and conclusive.

15 (i) If, following the issuance of a massage therapist permit, a massage therapist intends
16 to provide or administer massages at a massage establishment or hotel that is different from the
17 establishment or hotel identified on his application, the therapist shall immediately notify the
18 director in writing of this different establishment or hotel.

19 (j) A permit issued under this section shall be valid for a period of two years, and it may
20 be renewed for additional two-year periods upon the filing of a new application with the director,
21 along with a \$50 fee payable to the director of finance. In applying for the renewal of a permit,
22 the applicant shall demonstrate that he continues to meet the requirements of subsection (b).
23 Every permit issued under this section shall contain a serial number as determined by the
24 director, and each renewal application filed, and each renewal permit issued, shall continue to
25 utilize the same serial number. The provisions of this section that apply to initial applications for
26 massage therapist permits shall apply to applications for permit renewals.

27 (k) Every person to whom a massage therapist permit has been issued shall carry the
28 permit on his person, or shall display the permit in a conspicuous place in the massage
29 establishment or hotel at which he provides or administers massages.

30
31 Sec. 11-4.2-4 Same--issuance of home massage permits.
32

33 (a) Any massage therapist desiring to provide or administer a massage in the residence of
34 massage recipients, pursuant to section 11-4.2-2(b)(1)(v), shall possess a valid home permit
35 issued in accordance with this section. A person possessing a home massage permit issued under
36 this section who, following receipt of the permit, does not continue to meet the requirements set
37 out in subsection (b) below shall not be considered to be in possession of a valid home massage
38 therapist permit.

39 (b) In order to be eligible for a home massage permit, the applicant shall possess a valid
40 massage therapist permit issued under section 11-4.2-3, and propose to provide or administer
41 massages only to individuals who reside in residences in the city and only at the residences of
42 such individuals;

43 (c) All applicants for a home massage permit shall apply to the chief of police. The
44 application shall be on a form prepared by the chief, and shall be accompanied by an application
45 fee of \$25, payable to the director of finance. The application shall contain the applicant's name
46 and address, his Virginia Board of Nursing certified massage therapist number, the number of the

1 massage therapist permit issued to him under section 11-4.2-3 and, as to each residence at which
2 he wishes to provide massages, the address of the residents who will receive massages.

3 (d) The application to be filed under this section shall state thereon, "It is unlawful for
4 any person to make a false statement on this application and the discovery of a false statement
5 shall constitute sufficient grounds, in and of itself, for denial of an application or revocation of a
6 permit, after the imposition of a fine or imprisonment or both." It shall be unlawful for a person
7 to make a false statement on an application filed under this section.

8 (e) The chief of police shall deny any application for a home massage permit if the chief
9 finds that the applicant does not satisfy the requirements set out in subsection (b). The making of
10 a false statement on an application shall also be grounds for denial of the application.

11 (f) The decision of the chief of police on an application under this section shall be
12 conveyed to the applicant in writing, and shall be sent by certified mail to the applicant's last
13 known address. If the chief denies the application, he shall state in his written decision the
14 grounds for the denial and shall notify the applicant of his right to request a hearing, as provided
15 in subsection (g). If the chief approves the application, he shall issue, or cause to be issued, a
16 home massage permit to the applicant which, among other things, shall state the address of each
17 residence at which the therapist is authorized to provide massages.

18 (g) An applicant whose application under this section has been denied may request a
19 hearing before the chief of police. Such request, which shall not stay the effect of the chief's
20 initial decision, shall be in writing and shall be filed with the chief within 10 days of the date on
21 which the chief's decision was sent to the applicant. The chief shall schedule a hearing on a date
22 and at a time that is mutually convenient to the applicant and the chief, and shall notify the
23 applicant in writing of the date, time and place of the hearing. Within 10 days of the hearing, the
24 chief shall send a copy of his decision by certified mail to the applicant at his last known address.
25 This decision shall be final and conclusive. In the event an applicant does not timely request a
26 hearing on the chief's initial decision to deny his application, or requests but does not attend the
27 hearing, the initial decision shall be final and conclusive.

28 (h) If, following the issuance of a home massage permit, a massage therapist wishes to
29 provide or administer massages at residences other than those identified in the permit, the
30 therapist shall request the chief of police to amend the permit to include the address of such other
31 residences at which the therapist may provide massages. No massages shall be provided in such
32 other residences until an appropriate permit amendment has been issued by the chief.

33 (i) A permit issued under this section shall be valid for a period of one year, and it may
34 be renewed for additional one-year periods upon the filing of a new application with the chief of
35 police, along with a \$25 fee payable to the director of finance. In applying for the renewal of a
36 permit, the applicant shall demonstrate that he continues to meet the requirements of subsection
37 (b) and has, since the issuance of the permit, complied with section 11-4.2-2(b)(1)(v). Every
38 permit issued under this section shall contain a serial number as determined by the chief of
39 police, and each renewal application filed and each renewal permit issued shall continue to
40 utilize the same serial number.

41 (j) Every person to whom a home massage permit has been issued shall carry the permit
42 on his person when providing or administering massages in a residence.

43 (k) A home massage permit shall not be required for provision of massages at a hotel
44 pursuant to section 11-4.2-2(b)(1)(vi).

1 Sec. 11-4.2-5 Massage establishments; required licenses and permits.

2
3 (a) It shall be unlawful for any person to establish, maintain or operate a massage
4 establishment in the city without an appropriate business license under title 9 of this code and a
5 valid massage establishment permit issued under this section.

6 (b) Every person to whom a massage establishment permit has been issued shall display
7 the permit in a conspicuous place in the massage establishment so that it may be readily seen by
8 persons entering the establishment.

9
10 Sec. 11-4.2-6 Same--application for massage establishment permit; renewal.

11
12 (a) Any person desiring to own or operate a massage establishment in the city and every
13 salon, day spa, fitness center or like facility, but not guest rooms, located in a hotel at which
14 massages are provided pursuant to section 11-4.2-2(b)(1)(vi), shall obtain a massage
15 establishment permit from the director. An application for a massage establishment permit shall
16 be on a form prepared by the director and shall be accompanied by an application fee of \$25,
17 payable to the director of finance. Each application shall contain the name, address and telephone
18 number of the owner and operator of the massage establishment, and the address and telephone
19 number of the establishment. The applicant shall also state on the application all criminal
20 offenses for which the owner and operator have been convicted or in relation to which either has
21 pleaded nolo contendere or suffered a forfeiture, including the offenses identified in section 11-
22 4.2-3(b).

23 (b) The application shall state that no person may provide or administer a massage at the
24 massage establishment for which the permit is sought without a massage therapist permit issued
25 under this chapter, and that the applicant has read and understands this statement. The
26 application shall also state thereon, "It is unlawful for any person to make a false statement on
27 this application and discovery of a false statement shall constitute sufficient grounds, in and of
28 itself, for denial of an application or revocation of a permit, or for the imposition of a fine or
29 imprisonment or both." It shall be unlawful for the applicant to make a false statement on any
30 application filed pursuant to this section.

31 (c) Upon receipt of an application, the director shall forward a copy to the chief of police
32 for his review, and shall cause an investigation to be made of the massage establishment named
33 in the application to determine whether it will comply with the provisions of section 11-4.2-7. If
34 the director is satisfied from such investigation that the massage establishment will so comply,
35 he shall issue, or cause to be issued, a massage establishment permit authorizing the
36 establishment, maintenance and operation of the massage establishment. If the director is not so
37 satisfied, he shall deny the application.

38 (d) The decision of the director on an application under this section shall be conveyed to
39 the applicant in writing, and shall be sent by certified mail to the address given by the applicant
40 in the application. If the director denies the application, he shall state in his written decision the
41 grounds for the denial and shall notify the applicant of his right to request a hearing, as provided
42 in subsection (e).

43 (e) An applicant whose application under this section has been denied may request a
44 hearing before the director. Such request, which shall not stay the effect of the director's initial
45 decision, shall be in writing and shall be filed with the director within 10 days of the date on
46 which the director's decision was sent to the applicant. The director shall schedule a hearing on a

1 date and at a time that is mutually convenient to the applicant and the director, and shall notify
2 the applicant in writing of the date, time and place of the hearing. Within 10 days of the hearing,
3 the director shall send a copy of his decision by certified mail to the applicant at his last known
4 address. This decision shall be final and conclusive. In the event an applicant does not timely
5 request a hearing on the director's initial decision to deny his application, or requests but does not
6 attend the hearing, the initial decision shall be final and conclusive.

7 (f) A massage establishment permit issued under this section shall be valid for a period
8 of one year, and it may be renewed for additional one-year periods upon the filing of a new
9 application. The provisions of this section that apply to initial applications shall apply to renewal
10 applications.

11
12 Sec. 11-4.2-7 Same--minimum standards.

13
14 Every massage establishment in the city and every salon, day spa, fitness center or like
15 facility, but not guest rooms, located in a hotel at which massages are provided pursuant to
16 section 11-4.2-2(b)(1)(vi), shall, at all times, comply with the following minimum health and
17 safety standards:

18 (1) Massages may only be provided or administered by a massage therapist who
19 possesses a valid massage therapist permit issued under this chapter.

20 (2) The premises shall have adequate equipment for disinfecting and sterilizing
21 nondisposable instruments and materials used in administering massages. Such nondisposable
22 instruments and materials shall be disinfected after use on each patron.

23 (3) Closed cabinets shall be provided and used for the storage of clean linen, towels and
24 other materials used in connection with administering massages. All soiled linens, towels and
25 other materials shall be kept in properly covered containers or cabinets, which container's or
26 cabinets shall be kept separate from the clean storage areas.

27 (4) Clean linen and towels shall be provided for each massage patron. No common use
28 of towels or linens shall be permitted.

29 (5) All massage tables shall have surfaces which may be readily disinfected. The floor
30 areas, depending on the material covering the floor surface, shall have surfaces which may be
31 readily disinfected. This provision shall be applicable to bathtubs, showers, stalls, steam or bath
32 areas, if applicable.

33 (6) Oils, creams, lotions or other preparations used in administering massages shall be
34 kept in clean, closed containers or cabinets.

35 (7) Adequate dressing facilities shall be provided for the patrons to be served at any
36 given time. Adequate toilet facilities as required by law shall be furnished.

37 (8) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other
38 physical facilities, where provided, shall be in good repair and maintained in a clean and sanitary
39 condition. All facilities shall be thoroughly cleaned each day the business is in operation, and all
40 massage tables and bathtubs and showers, where furnished, shall be thoroughly cleaned after
41 each use. When carpeting is used on any floor area, it shall be kept dry.

42 (9) The premises shall be equipped with a service sink for custodial services, if
43 applicable.

1 Sec. 11-4.2-8 Same--hours of operation.

2
3 Massage establishments and salon, day spa, fitness center or like facility, and in-room
4 massage services located or provided in a hotel at which massages are provided pursuant to
5 section 11-4.2-2(b)(1)(vi), shall not operate or be offered before 6:00 a.m. or after 9:00 p.m.
6 Massage establishments and salon, day spa, fitness center or like facility, and in-room massage
7 services located or provided in a hotel at which massages are provided pursuant to section 11-
8 4.2-2(b)(1)(vi), may be opened or offered seven days a week.
9

10 Sec. 11-4.2-9 Same--right of entry of chief of police and director.

11
12 The chief of police and the director may enter, examine and survey any premises in the
13 city for which a massage establishment permit has been issued to enforce the provisions of this
14 chapter. Such inspections shall be made in a reasonable manner during business hours only.
15 Every holder of a massage establishment permit shall be deemed, by virtue of the application for
16 and utilization of such permit, to have consented and agreed to all of the provisions of this
17 chapter, including the right of entry and inspection set forth in this section.
18

19 Sec. 11-4.2-10 Suspension or revocation of massage therapist, home massage or massage
20 establishment permit.

21
22 (a) One or more violations of the provisions of this chapter by the permittee named in a
23 massage therapist, massage establishment or home massage permit shall be grounds for the
24 director, in the case of massage therapist and massage establishment permits, or the chief of
25 police, in the case of home massage permits, to suspend or revoke the permit. Prior to a permit
26 suspension or revocation, the director or chief shall provide written notice of the proposed action
27 to the permittee, of the reasons for the proposed action, and of the opportunity for a hearing
28 before the director or chief. The notice shall be mailed by certified mail to the last known address
29 of the permittee. The permittee shall request a hearing before the director or chief by filing a
30 request in writing within 10 days after notice of the director's or chief's proposed action has been
31 mailed to the permittee. The director or chief shall schedule a hearing on a date and at a time that
32 is mutually convenient to all parties. The director or chief shall give written notice of the date,
33 time and place of the hearing to the permittee. Within 10 days of the hearing, the director or chief
34 shall send a copy of his decision by certified mail to the permittee at his last known address. This
35 decision shall be final and conclusive.

36 (b) If a permittee does not request a hearing, the action proposed by the director or chief
37 shall be effective, and shall be final and conclusive, at the close of the tenth day following the
38 day on which notice of the proposed action was mailed to the permittee. If the permittee requests
39 but does not participate in the hearing, the action proposed by the director or chief shall be
40 immediately effective, and shall be final and conclusive.

41 (c) One or more violations of the provisions of this chapter at a hotel which offers
42 massage services pursuant to section 11-4.2-2(b)(1)(vi) of this code shall be grounds for the
43 director to suspend or revoke the authorization to offer massage services by the hotel. Prior to
44 such suspension or revocation, the director shall provide written notice of the proposed action to
45 the hotel, of the reasons for the proposed action, and of the opportunity for a hearing before the
46 director. The notice shall be mailed by certified mail to the hotel. The hotel may request a

1 hearing before the director by filing a request in writing within 10 days after notice of the
2 director's proposed action has been mailed. The director shall schedule a hearing on a date and at
3 a time that is mutually convenient to all parties. The director shall give written notice of the date,
4 time and place of the hearing to the hotel. Within 10 days of the hearing, the director shall send a
5 copy of his decision by certified mail to the permittee at his last known address. This decision
6 shall be final and conclusive.

7
8 Sec. 11-4.2-11 Specific unlawful acts.

9
10 (a) It shall be unlawful for any person to provide or administer a massage in the city
11 except as specifically authorized by section 11-4.2-2(b).

12 (b) It shall be unlawful for any person in a massage establishment, or in any of the other
13 locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or
14 administered, to place his hand or hands upon, to touch with any part of his body, to fondle in
15 any manner, or to massage a sexual or genital part of another person.

16 (c) It shall be unlawful for any person, in a massage establishment, or in any of the other
17 locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or
18 administered, to expose a sexual or genital part, or any portion thereof, of his own to any other
19 person, or to cause to be exposed a sexual or genital part, or any portion thereof, of any other
20 person.

21 (d) It shall be unlawful for any person, while in the presence of any other person in a
22 massage establishment, or in any of the other locations and facilities identified in section 11-4.2-
23 2(b) at which massages may be provided or administered, to fail to conceal with a fully opaque
24 covering the sexual or genital parts of his body.

25 (e) It shall be unlawful for any person owning, operating or managing a massage
26 establishment or any of the other locations and facilities identified in section 11-4.2-2(b) at
27 which massages may be provided or administered knowingly to cause, allow or permit in or
28 about the establishment, location or facility any agent, employee or other person under his
29 control or supervision to perform any of the acts described above in subsection (a), (b), (c) or (d).

30
31 Sec. 11-4.2-12 Penalties.

32
33 Any person violating any of the provisions of this chapter shall, upon conviction, be
34 guilty of a class 1 misdemeanor and shall be punished by a fine not exceeding \$2,500 or
35 imprisonment not exceeding twelve months, or both. Violations of the provisions of this chapter
36 may also be restrained, prohibited or enjoined by appropriate action or proceeding.
37 Notwithstanding the above, no provision of this chapter shall apply to employees or agents of the
38 United States, the Commonwealth of Virginia or the city, or of any agency or department of
39 these governmental units, including city police officers, while in the performance of official
40 duties.

41
42 Sec. 11-4.2-13 Records required for massage services in hotel guest rooms.

43
44 (a) Each hotel which offers massage services in hotel guest rooms pursuant to this
45 chapter shall maintain a written record for a period of not less than two years of each massage
46 provided, including the date and time of service, identity of massage therapist and name of guest.

1 (b) Each massage therapist who provides massage services in hotel guest rooms
2 pursuant to this chapter shall maintain a written record for a period of not less than two years of
3 each massage provided at the hotel, including the date and time of service and name of guest.

4 (c) Failure to maintain the records required by this section shall be a Class 3 civil
5 violation.

6 (d) Records maintained pursuant to this section shall be produced on written demand
7 by the director or the chief of police.

8
9 Section 2. That this ordinance shall become effective on the date and at the time of final
10 passage.

11
12 William D. Euille
13 Mayor
14

15
16 Introduction: 01/08/08
17 First Reading: 01/08/08
18 Publication:
19 Public Hearing:
20 Second Reading:
21 Final Passage:

12
1-12-08

Massage Ordinance changes as adopted by Council:

Page 2, line 25:

Strike "9:00 p.m." and insert "11:00 p.m."

Page 3, line 13:

After "contract" insert "(including employees of a contractor)"

Page 8, line 3:

After "establishments" insert "shall not operate before 6:00 a.m . or after 9:00 p.m."

Strike "facility" and insert "facilities"

Page 8, line 5:

Strike "9:00 p.m." and insert "11:00 p.m."

SPEAKER'S FORM
DOCKET ITEM NO. 12

**PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK
BEFORE YOU SPEAK ON A DOCKET ITEM**

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. NAME: M Catharine Puskas
2. ADDRESS: 2200 Clarendon Blvd Ste 1300 Arl, VA 22201
- TELEPHONE NO. 703-528-4700 E-MAIL ADDRESS: cpuskas@aol.thelandlawyers.com
3. WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF? Kimpton Hotels
4. WHAT IS YOUR POSITION ON THE ITEM?
FOR: ☒ AGAINST: ☐ OTHER: ☐
5. NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.): Attorney
6. ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?
YES ☒ NO ☐

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation, except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard on a docket item shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at public hearing meetings. The mayor may grant permission to a person, who is unable to participate in public discussion at a public hearing meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular legislative meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

Guidelines for the Public Discussion Period

- (a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the city clerk.
- (b) No speaker will be allowed more than three minutes; except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard during the public discussion period shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation.
- (c) If more speakers are signed up than would be allotted for in 30 minutes, the mayor will organize speaker requests by subject or position, and allocated appropriate times, trying to ensure that speakers on unrelated subjects will also be allowed to speak during the 30 minute public discussion period.
- (d) If speakers seeking to address council on the same subject cannot agree on a particular order or method that they would like the speakers to be called on, the speakers shall be called in the chronological order of their request forms' submission.
- (e) Any speakers not called during the public discussion period will have the option to speak at the conclusion of the meeting, after all docketed items have been heard.

ORDINANCE NO. 4516

AN ORDINANCE to amend and reordain Chapter 4.2 (MASSAGE REGULATIONS) of Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 4.2 of Title 11 of the Code of the City of Alexandria, Virginia, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 11-4.2-1 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning given below, except in those instances when the context clearly indicates a different meaning.

(1) *Care facility*. Any place or building in which (i) medical, surgical, nursing or other health services are furnished by duly licensed individuals for the prevention, diagnosis or treatment of human disease, pain, injury or other physical condition to two or more unrelated sick, injured, disabled or aged persons, or (ii) convalescent or similar care is furnished by duly licensed individuals to two or more unrelated sick, injured, disabled or aged persons.

(2) *Director*. The director of public health of the city or his duly authorized representative.

(3) *Massage*. The treatment of 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 one or more parts of the body with hand, or any instrument, for compensation.

(4) *Massage establishment*. Any establishment in the city where massages are provided or administered, or which holds itself out to the public as a place where massages are provided or administered; provided, that this definition shall not include a hotel, hospital, nursing home or medical clinic, a care facility, the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath, barbershop or a beauty salon.

(5) *Massage therapist*. Any person possessing a valid massage therapist permit issued pursuant to this chapter.

(6) *Police chief*. The chief of police of the city or his duly authorized representative.

(7) *Public gathering*. Any event occurring in the city that is open to the general public and involves more than 50 persons.

(8) *Residence*. A place which an individual considers his permanent abode and in which he either has resided during at least the prior six months or intends to reside during at least the next six months; this term shall not include any place which provides transient lodging such as hotels, inns, apartment house hotels, hostelryes, tourist homes or houses, motels, and rooming houses.

(9) *Seated massage*. A massage provided to the upper human body while the massage recipient is fully clothed and seated in a chair.

(10) *Sexual or genital part*. The genitals, pubic area, anus or perineum of any person, or the vulva or breasts of a female.

Sec. 11-4.2-2 Provision of massages.

(a) Except as provided in subsection (b), it shall be unlawful for any person to provide or administer a massage at any location in the city.

(b) Only the following persons, under the following conditions, may provide or administer a massage in the city:

(1) *massage therapists:*

(i) at or within a massage establishment;

(ii) at the regular place of business of the massage recipient between the hours of 9:00 a.m. and 6:00 p.m.; provided, that a therapist may only provide a seated massage at this location and may do so only if he possesses his massage therapy permit while performing the seated massage;

(iii) at a public gathering; provided, that the therapist possesses his massage therapy permit while performing massages at such a gathering;

(iv) at a care facility; provided, that the therapist possesses his massage therapy permit while performing massages at this location; and

(v) at the residence of the massage recipient between the hours of 6:00 a.m. and 9:00 p.m.; provided, that the therapist holds a valid home massage permit issued pursuant to this chapter, possesses that permit and his massage therapy permit while performing massages in a residence, and provides massages at the residence only to individuals identified in his home massage permit.

(vi) at a hotel having 45 or more guest rooms, which offers massage services to its registered overnight guests in the normal course of the hotel's business, either in the hotel room of the guest receiving the massage, or at a salon, day spa, fitness center or like facility located within the hotel, between the hours of 6:00 a.m. and 11:00 p.m.; provided, that the therapist carries his massage therapy permit on his person while performing massages in guest rooms.

(2) *persons who are certified as a massage therapist by, and are in good standing with, the Virginia Board of Nursing:*

(i) at the regular place of business of the massage recipient between the hours of 9:00 a.m. and 6:00 p.m.; provided, that the board certified therapist may only provide a seated massage at this location and may do so only if he possesses a picture identification while performing the seated massage; and

(ii) at a public gathering; provided, that the board certified therapist possesses a picture identification while performing massages at such a gathering; and

(3) *persons:*

(i) at a hospital, nursing home or medical clinic, or at the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath; or

(ii) at a barbershop or beauty salon; provided, that, at this location, the person may only provide a massage to the scalp, face, neck or shoulders of the massage recipient.

Sec. 11-4.2-3 Massage therapists; issuance of massage therapist permits.

(a) Any person who desires to provide or administer massages in the city as a massage therapist shall possess a valid massage therapist permit issued in accordance with this section. A person possessing a massage therapist permit issued under this section who, following receipt of the permit, does not continue to meet the requirements set out in subsection (b) below shall not be considered to be in possession of a valid massage therapist permit.

(b) In order to be eligible for a massage therapist permit, the applicant shall:

(1) be certified as a massage therapist pursuant to sections 54.1-3000 and 54.1-3029 of the Code of Virginia (1950), as amended, by, and be in good standing with, the Virginia Board of Nursing, or have a valid provisional certificate to practice massage therapy which has been issued by the Board of Nursing pursuant to its regulations;

(2) own, or be employed at or under contract including employees of a contractor with (i) a massage establishment for which a permit has been issued under section 11-4.2-5, or (ii) a hotel in the City of Alexandria described in section 11-4.2-2(b)(1)(vi) of this code; and

(3) not have been convicted of, or pleaded nolo contendere or suffered a forfeiture in relation to, any of the offenses identified in sections 18.2-344 through 18.2-361 or sections 18.2-372 through 18.2-387 of the Code of Virginia (1950), as amended, which sections relate to sexual offenses, prostitution, obscenity and similar offenses, or any similar offenses under the laws of another jurisdiction.

(c) All applicants for a massage therapist permit shall apply to the director. The application shall be on a form prepared by the director and shall be accompanied by an application fee of \$50, payable to the director of finance. The application shall contain the name, address, telephone number, date of birth, place of birth, and height and weight of the applicant, the applicant's Virginia Board of Nursing certified massage therapist number or provisional certification number, and the address and telephone number of the massage establishment or hotel which the applicant owns, is employed at, or is under contract with. The applicant shall also state on the application all criminal offenses for which he has been convicted or in relation to which he has pleaded nolo contendere or suffered a forfeiture, including the offenses identified in subsection (b).

(d) The application to be filed under this section shall state thereon, "It is unlawful for any person to make a false statement on this application and the discovery of a false statement shall constitute sufficient grounds, in and of itself, for the denial of an application or revocation of a permit, or for the imposition of a fine or imprisonment or both." It shall be unlawful for a person to make a false statement on an application filed under this section.

(e) The director shall refer the applicant to the chief of police to be photographed and fingerprinted. The photograph and fingerprints shall constitute part of the application. The chief of police shall, to the extent permitted by law, forward the applicant's fingerprint cards to the Virginia state police for purposes of conducting a review of the applicant's criminal history. After he has completed his investigation of the applicant, the chief of police shall return the application to the director, together with the results of his investigation.

(f) The director shall deny any application for a massage therapist permit if the director finds that the applicant does not satisfy the requirements set out in subsection (b). The making of a false statement on an application shall also be grounds for denial of the application.

(g) The decision of the director on an application under this section shall be conveyed to the applicant in writing, and shall be sent by certified mail to the applicant's last known address.

If the director denies the application, he shall state in his written decision the grounds for the denial and shall notify the applicant of his right to request a hearing, as provided in subsection (h). If the director approves the application, he shall issue, or cause to be issued, a massage therapist permit to the applicant.

(h) An applicant whose application under this section has been denied may request a hearing before the director. Such request, which shall not stay the effect of the director's initial decision, shall be in writing and shall be filed with the director within 10 days of the date on which the director's decision was sent to the applicant. The director shall schedule a hearing on a date and at a time that is mutually convenient to the applicant and the director, and shall notify the applicant in writing of the date, time and place of the hearing. Within 10 days of the hearing, the director shall send a copy of his decision by certified mail to the applicant at his last known address. This decision shall be final and conclusive. In the event an applicant does not timely request a hearing on the director's initial decision to deny his application, or requests but does not attend the hearing, the initial decision shall be final and conclusive.

(i) If, following the issuance of a massage therapist permit, a massage therapist intends to provide or administer massages at a massage establishment or hotel that is different from the establishment or hotel identified on his application, the therapist shall immediately notify the director in writing of this different establishment or hotel.

(j) A permit issued under this section shall be valid for a period of two years, and it may be renewed for additional two-year periods upon the filing of a new application with the director, along with a \$50 fee payable to the director of finance. In applying for the renewal of a permit, the applicant shall demonstrate that he continues to meet the requirements of subsection (b). Every permit issued under this section shall contain a serial number as determined by the director, and each renewal application filed, and each renewal permit issued, shall continue to utilize the same serial number. The provisions of this section that apply to initial applications for massage therapist permits shall apply to applications for permit renewals.

(k) Every person to whom a massage therapist permit has been issued shall carry the permit on his person, or shall display the permit in a conspicuous place in the massage establishment or hotel at which he provides or administers massages.

Sec. 11-4.2-4 Same--issuance of home massage permits.

(a) Any massage therapist desiring to provide or administer a massage in the residence of massage recipients, pursuant to section 11-4.2-2(b)(1)(v), shall possess a valid home permit issued in accordance with this section. A person possessing a home massage permit issued under this section who, following receipt of the permit, does not continue to meet the requirements set out in subsection (b) below shall not be considered to be in possession of a valid home massage therapist permit.

(b) In order to be eligible for a home massage permit, the applicant shall possess a valid massage therapist permit issued under section 11-4.2-3, and propose to provide or administer massages only to individuals who reside in residences in the city and only at the residences of such individuals;

(c) All applicants for a home massage permit shall apply to the chief of police. The application shall be on a form prepared by the chief, and shall be accompanied by an application fee of \$25, payable to the director of finance. The application shall contain the applicant's name and address, his Virginia Board of Nursing certified massage therapist number, the number of the

massage therapist permit issued to him under section 11-4.2-3 and, as to each residence at which he wishes to provide massages, the address of the residents who will receive massages.

(d) The application to be filed under this section shall state thereon, "It is unlawful for any person to make a false statement on this application and the discovery of a false statement shall constitute sufficient grounds, in and of itself, for denial of an application or revocation of a permit, after the imposition of a fine or imprisonment or both." It shall be unlawful for a person to make a false statement on an application filed under this section.

(e) The chief of police shall deny any application for a home massage permit if the chief finds that the applicant does not satisfy the requirements set out in subsection (b). The making of a false statement on an application shall also be grounds for denial of the application.

(f) The decision of the chief of police on an application under this section shall be conveyed to the applicant in writing, and shall be sent by certified mail to the applicant's last known address. If the chief denies the application, he shall state in his written decision the grounds for the denial and shall notify the applicant of his right to request a hearing, as provided in subsection (g). If the chief approves the application, he shall issue, or cause to be issued, a home massage permit to the applicant which, among other things, shall state the address of each residence at which the therapist is authorized to provide massages.

(g) An applicant whose application under this section has been denied may request a hearing before the chief of police. Such request, which shall not stay the effect of the chief's initial decision, shall be in writing and shall be filed with the chief within 10 days of the date on which the chief's decision was sent to the applicant. The chief shall schedule a hearing on a date and at a time that is mutually convenient to the applicant and the chief, and shall notify the applicant in writing of the date, time and place of the hearing. Within 10 days of the hearing, the chief shall send a copy of his decision by certified mail to the applicant at his last known address. This decision shall be final and conclusive. In the event an applicant does not timely request a hearing on the chief's initial decision to deny his application, or requests but does not attend the hearing, the initial decision shall be final and conclusive.

(h) If, following the issuance of a home massage permit, a massage therapist wishes to provide or administer massages at residences other than those identified in the permit, the therapist shall request the chief of police to amend the permit to include the address of such other residences at which the therapist may provide massages. No massages shall be provided in such other residences until an appropriate permit amendment has been issued by the chief.

(i) A permit issued under this section 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 with the chief of police, along with a \$25 fee payable to the director of finance. In applying for the renewal of a permit, the applicant shall demonstrate that he continues to meet the requirements of subsection (b) and has, since the issuance of the permit, complied with section 11-4.2-2(b)(1)(v). Every permit issued under this section shall contain a serial number as determined by the chief of police, and each renewal application filed and each renewal permit issued shall continue to utilize the same serial number.

(j) Every person to whom a home massage permit has been issued shall carry the permit on his person when providing or administering massages in a residence.

(k) A home massage permit shall not be required for provision of massages at a hotel pursuant to section 11-4.2-2(b)(1)(vi).

Sec. 11-4.2-5 Massage establishments; required licenses and permits.

(a) It shall be unlawful for any person to establish, maintain or operate a massage establishment in the city without an appropriate business license under title 9 of this code and a valid massage establishment permit issued under this section.

(b) Every person to whom a massage establishment permit has been issued shall display the permit in a conspicuous place in the massage establishment so that it may be readily seen by persons entering the establishment.

Sec. 11-4.2-6 Same--application for massage establishment permit; renewal.

(a) Any person desiring to own or operate a massage establishment in the city and every salon, day spa, fitness center or like facility, but not guest rooms, located in a hotel at which massages are provided pursuant to section 11-4.2-2(b)(1)(vi), shall obtain a massage establishment permit from the director. An application for a massage establishment permit shall be on a form prepared by the director and shall be accompanied by an application fee of \$25, payable to the director of finance. Each application shall contain the name, address and telephone number of the owner and operator of the massage establishment, and the address and telephone number of the establishment. The applicant shall also state on the application all criminal offenses for which the owner and operator have been convicted or in relation to which either has pleaded nolo contendere or suffered a forfeiture, including the offenses identified in section 11-4.2-3(b).

(b) The application shall state that no person may provide or administer a massage at the massage establishment for which the permit is sought without a massage therapist permit issued under this chapter, and that the applicant has read and understands this statement. The application shall also state thereon, "It is unlawful for any person to make a false statement on this application and discovery of a false statement shall constitute sufficient grounds, in and of itself, for denial of an application or revocation of a permit, or for the imposition of a fine or imprisonment or both." It shall be unlawful for the applicant to make a false statement on any application filed pursuant to this section.

(c) Upon receipt of an application, the director shall forward a copy to the chief of police for his review, and shall cause an investigation to be made of the massage establishment named in the application to determine whether it will comply with the provisions of section 11-4.2-7. If the director is satisfied from such investigation that the massage establishment will so comply, he shall issue, or cause to be issued, a massage establishment permit authorizing the establishment, maintenance and operation of the massage establishment. If the director is not so satisfied, he shall deny the application.

(d) The decision of the director on an application under this section shall be conveyed to the applicant in writing, and shall be sent by certified mail to the address given by the applicant in the application. If the director denies the application, he shall state in his written decision the grounds for the denial and shall notify the applicant of his right to request a hearing, as provided in subsection (e).

(e) An applicant whose application under this section has been denied may request a hearing before the director. Such request, which shall not stay the effect of the director's initial decision, shall be in writing and shall be filed with the director within 10 days of the date on which the director's decision was sent to the applicant. The director shall schedule a hearing on a

date and at a time that is mutually convenient to the applicant and the director, and shall notify the applicant in writing of the date, time and place of the hearing. Within 10 days of the hearing, the director shall send a copy of his decision by certified mail to the applicant at his last known address. This decision shall be final and conclusive. In the event an applicant does not timely request a hearing on the director's initial decision to deny his application, or requests but does not attend the hearing, the initial decision shall be final and conclusive.

(f) A massage establishment permit issued under this section 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. The provisions of this section that apply to initial applications shall apply to renewal applications.

Sec. 11-4.2-7 Same--minimum standards.

Every massage establishment in the city and every salon, day spa, fitness center or like facility, but not guest rooms, located in a hotel at which massages are provided pursuant to section 11-4.2-2(b)(1)(vi), shall, at all times, comply with the following minimum health and safety standards:

(1) Massages may only be provided or administered by a massage therapist who possesses a valid massage therapist permit issued under this chapter.

(2) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.

(3) Closed cabinets shall be provided and used for the 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 container's or cabinets shall be kept separate from the clean storage areas.

(4) Clean linen and towels shall be provided for each massage patron. No common use of towels or linens shall be permitted.

(5) All massage tables shall have surfaces which may be readily disinfected. The floor areas, depending on the material covering the floor surface, shall have surfaces which may be readily disinfected. This provision shall be applicable to bathtubs, showers, stalls, steam or bath areas, if applicable.

(6) Oils, creams, lotions or other preparations used in administering massages shall be kept in clean, closed containers or cabinets.

(7) Adequate dressing facilities shall be provided for the patrons to be served at any given time. Adequate toilet facilities as required by law shall be furnished.

(8) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities, where provided, shall be in good repair and maintained in a clean and sanitary condition. All facilities shall be thoroughly cleaned each day the business is in operation, and all massage tables and bathtubs and showers, where furnished, shall be thoroughly cleaned after each use. When carpeting is used on any floor area, it shall be kept dry.

(9) The premises shall be equipped with a service sink for custodial services, if applicable.

Sec. 11-4.2-8 Same--hours of operation.

Massage establishments shall not operate before 6:00 a.m. or after 9:00 p.m. and salon, day spa, fitness center or like facilities, and in-room massage services located or provided in a hotel at which massages are provided pursuant to section 11-4.2-2(b)(1)(vi), shall not operate or be offered before 6:00 a.m. or after 11:00 p.m. Massage establishments and salon, day spa, fitness center or like facilities, and in-room massage services located or provided in a hotel at which massages are provided pursuant to section 11-4.2-2(b)(1)(vi), may be opened or offered seven days a week.

Sec. 11-4.2-9 Same--right of entry of chief of police and director.

The chief of police and the director may enter, examine and survey any premises in the city for which a massage establishment permit has been issued to enforce the provisions of this chapter. Such inspections shall be made in a reasonable manner during business hours only. Every holder of a massage establishment permit shall be deemed, by virtue of the application for and utilization of such permit, to have consented and agreed to all of the provisions of this chapter, including the right of entry and inspection set forth in this section.

Sec. 11-4.2-10 Suspension or revocation of massage therapist, home massage or massage establishment permit.

(a) One or more violations of the provisions of this chapter by the permittee named in a massage therapist, massage establishment or home massage permit shall be grounds for the director, in the case of massage therapist and massage establishment permits, or the chief of police, in the case of home massage permits, to suspend or revoke the permit. Prior to a permit suspension or revocation, the director or chief shall provide written notice of the proposed action to the permittee, of the reasons for the proposed action, and of the opportunity for a hearing before the director or chief. The notice shall be mailed by certified mail to the last known address of the permittee. The permittee shall request a hearing before the director or chief by filing a request in writing within 10 days after notice of the director's or chief's proposed action has been mailed to the permittee. The director or chief shall schedule a hearing on a date and at a time that is mutually convenient to all parties. The director or chief shall give written notice of the date, time and place of the hearing to the permittee. Within 10 days of the hearing, the director or chief shall send a copy of his decision by certified mail to the permittee at his last known address. This decision shall be final and conclusive.

(b) If a permittee does not request a hearing, the action proposed by the director or chief shall be effective, and shall be final and conclusive, at the close of the tenth day following the day on which notice of the proposed action was mailed to the permittee. If the permittee requests but does not participate in the hearing, the action proposed by the director or chief shall be immediately effective, and shall be final and conclusive.

(c) One or more violations of the provisions of this chapter at a hotel which offers massage services pursuant to section 11-4.2-2(b)(1)(vi) of this code shall be grounds for the director to suspend or revoke the authorization to offer massage services by the hotel. Prior to such suspension or revocation, the director shall provide written notice of the proposed action to the hotel, of the reasons for the proposed action, and of the opportunity for a hearing before the

director. The notice shall be mailed by certified mail to the hotel. The hotel may request a hearing before the director by filing a request in writing within 10 days after notice of the director's proposed action has been mailed. The director shall schedule a hearing on a date and at a time that is mutually convenient to all parties. The director shall give written notice of the date, time and place of the hearing to the hotel. Within 10 days of the hearing, the director shall send a copy of his decision by certified mail to the permittee at his last known address. This decision shall be final and conclusive.

Sec. 11-4.2-11 Specific unlawful acts.

(a) It shall be unlawful for any person to provide or administer a massage in the city except as specifically authorized by section 11-4.2-2(b).

(b) It shall be unlawful for any person in a massage establishment, or in any of the other locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or administered, to place his hand or hands upon, to touch with any part of his body, to fondle in any manner, or to massage a sexual or genital part of another person.

(c) It shall be unlawful for any person, in a massage establishment, or in any of the other locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or administered, to expose a sexual or genital part, or any portion thereof, of his own to any other person, or to cause to be exposed a sexual or genital part, or any portion thereof, of any other person.

(d) It shall be unlawful for any person, while in the presence of any other person in a massage establishment, or in any of the other locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or administered, to fail to conceal with a fully opaque covering the sexual or genital parts of his body.

(e) It shall be unlawful for any person owning, operating or managing a massage establishment or any of the other locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or administered knowingly to cause, allow or permit in or about the establishment, location or facility any agent, employee or other person under his control or supervision to perform any of the acts described above in subsection (a), (b), (c) or (d).

Sec. 11-4.2-12 Penalties.

Any person violating any of the provisions of this chapter shall, upon conviction, be guilty of a class 1 misdemeanor and shall be punished by a fine not exceeding \$2,500 or imprisonment not exceeding twelve months, or both. Violations of the provisions of this chapter may also be restrained, prohibited or enjoined by appropriate action or proceeding. Notwithstanding the above, no provision of this chapter shall apply to employees or agents of the United States, the Commonwealth of Virginia or the city, or of any agency or department of these governmental units, including city police officers, while in the performance of official duties.

Sec. 11-4.2-13 Records required for massage services in hotel guest rooms.

- (a) (a) Each hotel which offers massage services in hotel guest rooms pursuant to this chapter shall maintain a written record for a period of not less than two years of each massage

provided, including the date and time of service, identity of massage therapist and name of guest.

(b) Each massage therapist who provides massage services in hotel guest rooms pursuant to this chapter shall maintain a written record for a period of not less than two years of each massage provided at the hotel, including the date and time of service and name of guest.

(c) Failure to maintain the records required by this section shall be a Class 3 civil violation.

(d) Records maintained pursuant to this section shall be produced on written demand by the director or the chief of police.

Section 2. That this ordinance shall become effective on the date and at the time of final passage.

William D. Euille
Mayor

Final Passage: January 12, 2008