

ORDINANCE NO. 4008

AN ORDINANCE to repeal Chapter 4.1 (MASSAGE REGULATIONS), and to enact a new 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Chapter 4.1 of Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same is, hereby repealed.

Section 2. That Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding a new chapter 4.2, to read as follows:

CHAPTER 4.2

MASSAGE REGULATIONS

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 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.

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.

(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 with, a massage establishment for which a permit has been issued under section 11-4.2-5; 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 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 that is different from the establishment identified on his application, the therapist shall immediately notify the director in writing of this different establishment.

(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 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.

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 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 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 containers 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. Massage establishments may be opened 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.

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.

Section 3. The repeal, by Section 1 of this Ordinance, of Chapter 4.1 of Title 11 of The Code of the City of Alexandria, 1981, as amended, shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, and the same may be enjoyed, asserted, enforced or prosecuted as fully and to the same extent as if such repeal had not been effected. Thus, for example, massage therapist permits and massage establishment permits issued under Chapter 4.1 shall remain valid until the date of their expiration.

Section 4. That the effective date of this ordinance shall be July 1, 1998.

KERRY J. DONLEY
Mayor

Introduction: 06/09/98
First Reading: 06/09/98
Publication: 06/10/98; 6/11/98
Public Hearing: 06/13/98
Second Reading: 06/13/98
Final Passage: 06/13/98