

MESSAGE ESTABLISHMENT ORDINANCE

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ARTICLE I -- GENERAL PROVISIONS

Sec. 12.1.1. Title

This Ordinance may be referred to as the "Message Establishment Ordinance" of the Town of Gate City, Virginia, and shall be effective January 1, 1980.

It is hereby declared that the Town Council of the Town of Gate City has found that there has been a large increase in the number of massage establishments in the Town of Gate City, and that the unregulated proliferation of massage establisments fosters the spread of communicable diseases and facilitates the use of the premises for lewd displays and prostitution, and therefore the Council declares that the licensing of massage establishments is required to protect the public health, safety, and general welfare.

Sec. 12.1.2. Penalties

Any person violating the provisions of this Ordinance shall be punished by 12 months in jail or \$1,000 fine either or both.

Sec. 12.1.3. Enforcement

(a) Any massage establishment permit or massage technician permit granted under this Ordinance shall be revoked by the Chief of Police after notice and hearing if the permittee (is a partnership or association, any partner or member thereof, or if the licensee is a corporation, any officer, director, or shareholder owning ten percent (10%) of more of its capital stock):

(1) Has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision included in Section 18.1-195 through 199 of Section 18.1-204 through 215, Virginia Code Ann., or Section 28.2-346 through 349, or Section 18.2-355 through 361 or Section 18.2-368 of Section 18.2-370, Virginia Code Ann., which laws related to sexual offenses; or

(2) Has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision of this ordinance relating to massage establishments, or on a charge of violating a similar law in any other jurisdiction; or

(3) Made a false statement of the application. Notice of the hearing before the Chief of Police for revocation of the permit shall be given in writing, setting forth the grounds of the complaint and the time and place of hearing. Such notice shall be mailed by certified mail to the permittee's last known address at least ten (10) days prior to the date set for hearing.

(b) If the Chief of Police finds that the massage establishment for which the massage establishment permit was issued does not conform to the standards set forth in Article IV of this Ordinance, or the permittee has refused the Chief of Police or other authorized person the right to enter the premises to enforce the provisions of this Ordinance, the Chief of Police may enter an order for the immediate suspension of the massage establishment permit until such time as he finds that the reason for such suspension no longer exists. A copy of the order shall be sent to the permittee at his place of business by certified mail, which order shall set forth the reasons for said suspension. The permittee shall be afforded an opportunity to be heard by the Chief of Police within twelve (12) days after the suspension. Notice of the hearing shall be mailed by certified mail to the permittee's business address at least ten (1) days prior to the date set for hearing. No person shall operate a massage establishment when subject to an order of suspension.

ARTICLE II -- DEFINITIONS

Sec. 12.2.1. Definitions

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

(a) Massage. A method of treating the external parts of the human body by rubbing, stroking, kneading, tapping or vibrating with the hand or any instrument for pay.

(b) Massage Establishment. Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, health clubs, sauna baths, and steam baths. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath or physical therapist duly licensed by the Commonwealth of Virginia, nor barber shops or beauty salons in which massages are administered only to scalp, the face, the neck, or the shoulder. This definition shall not be construed to include a volunteer fire department, a volunteer rescue squad or a nonprofit organization operating a community center, swimming pool, tennis court or other educational, cultural, recreational, and athletic facilities and facilities for the welfare of the residents of the area.

(c) Massage Technician. Any individual who administers a massage to another individual at a massage establishment for pay. This definition shall not be construed to include a physician, surgeon, chiropractor, osteopath, physical therapist, or nurse duly licensed by the Commonwealth of Virginia.

(d) Erogenous Area. The public area, penis, scrotum, vulva, perineum, or anus.

(e) Director of Health. The Scott County Director of Health or his duly authorized agent.

(f) Person. Any individual, firm, partnership, corporation, company, association, or joint stock association.

ARTICLE III -- PERMITS REQUIRED

Sec. 12.3.1. Permit Required for Operation of Massage Establishment

(a) No person shall engage in, conduct, or carry on a massage establishment unless an application therefore has been approved and permit issued by the Chief of Police in compliance with this Ordinance.

(b) Upon application, the Chief of Police shall issue a temporary massage establishment permit to any applicant who was, upon the effective date of this Ordinance, the owner or operator of such an establishment in Scott County. Such temporary permit shall remain in effect for a period of thirty (30) days or until issuance of the permanent permit. If the application for the permanent permit is denied, said temporary permit shall immediately expire and be of no further force and effect.

(c) Each application for a massage establishment permit shall be accompanied by an investigation fee as established by Board Resolution, no part of which shall be refundable. Such fee shall not be in lieu of, and shall be in addition to, any permit required by this Ordinance. Upon receipt of said application, the Chief of Police shall refer the application to the Director of Health, who within a period of twenty-one (21) days from the date of application, shall review records and

make an inspection of the premises proposed to be used as a massage establishment and shall make a written recommendation to the Chief of Police concerning compliance with the law.

Sec. 12.3.2. Massage Establishment Permit Fee; Term

Every person conducting or engaging in business as a massage establishment shall pay an annual fee of one thousand two hundred fifty dollars (\$1,250.00) which permit must be renewed one year from date of issuance.

Sec. 12.3.3. Massage Establishment Permit Application

(a) Each application for a massage establishment permit shall be upon a form provided by the Chief of Police, and shall be submitted to said Chief of Police. Each such form shall contain the following information:

- (1) A description of the facilities and services to be available on the premises of the proposed establishment.
- (2) The location and mailing address of each applicant.
- (3) The name and residence address of each applicant. If applicant is an association or a partnership, the names and residence addresses of each of the associates or partners. If applicant is a corporation, the names of residence addresses of each of the officers and directors of said corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation. If one or more of the stockholders owning more than ten percent (10%) of the applicant corporation is itself a corporation and owns thirty-three percent (33%) of the stock of the applicant corporation, the names and residence addresses of each of the officers and directors of said corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation.
- (4) If the applicant is an individual, all other residences of the applicant for the three (3) year period immediately prior to the application. If the applicant is a corporation, all the residences for a three (3) year period of each of the officers and directors of said corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation.
- (5) If the applicant is an individual, written proof that the applicant is eighteen (18) years of age or older. If the applicant is a partnership, written proof that each partner is eighteen (18) years of age or older. If the applicant is a corporation, written proof that each of the officers and directors of said corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation is eighteen (18) years of age or older.
- (6) If the applicant is an individual, a complete set of the applicant's fingerprints. If the applicant is an association or partnership, a complete set of each of the officers and directors of the corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation. If one or more of the stockholders owning more than ten percent (10%) of the applicant corporation is itself a corporation and owns thirty-three percent (33%) of the stock of the applicant corporation, a complete set of fingerprints of each of the officers and directors of

said corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation. The fingerprints shall be taken by the Chief of Police or his agent.

(7) If the applicant is an individual, the business, occupation, or employment of the applicant for the three (3) year period immediately preceding the date of the application. If the applicant is an association or partnership, the business occupation or employment of each associate or partner for the three (3) year period immediately prior to the date of the application.

(8) The history of the applicant in the operation of massage establishments or similar business or occupation, including, but not limited to, whether or not such person, in previously operating in this or another county, town, city or state under license, has had such permit revoked or suspended and the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.

(9) The criminal record, if any, other than misdemeanor traffic violations, of the applicant. If the applicant is an association or partnership, the criminal record of each associate or partner. If the applicant is a corporation, the criminal record of each officer or director of the corporation and each of the stockholders owning more than ten percent (10%) of the stock of the corporation. If one or more of the stockholders owning more than ten percent (10%) of the applicant corporation is itself a corporation and owns thirty-three percent (33%) of the stock of the applicant corporation, the criminal record of each of the officers and directors of said corporation and each of the stockholders owning more than ten percent (10%) of the stock of the corporation.

Sec. 12.3.4. Permit Required for Massage Technician

(a) No massage technician shall administer a massage in a massage establishment without a valid, non-suspended permit issued pursuant to this Ordinance.

(b) Upon application, the Chief of Police shall issue a temporary massage technician permit to any applicant who was, upon the effective date of this Ordinance, performing the function of a massage technician in the Town of Gate City. Such temporary permit shall remain in effect for a period of thirty (30) days or until issuance of the permanent permit. If said permanent permit is denied, said temporary permit shall immediately expire and shall be of no further force and effect.

Sec. 12.3.5. Massage Technician Permit Fee; Term; Health Certificate Required

Every person conducting or engaging in the administration of massages in a massage establishment shall pay an annual permit fee of fifty dollars (\$50.00), which permit shall be renewed one year from date of issue. The permittee must submit a certificate to be issued by the Director of Health, and these health certificates shall be valid for twelve months (12). The certificates shall be issued upon such conditions as the Director of Health may deem reasonable and proper under this Ordinance.

Sec. 12.3.6. Message Technician Permit Application

(a) Each application for a massage technician permit shall be upon a form provided by the Chief of Police. Each such form shall contain the following information:

- (1) The applicant's full name, residential address, and resident telephone number.
- (2) The name and address of the massage establishment where the applicant is to be employed and the name of the owner of same.
- (3) The names and addresses of any and all previous massage establishments where applicant has been employed as a massage technician.
- (4) The criminal record, if any, other than misdemeanor traffic violations of the applicant.
- (5) Whether any permit to perform as a massage technician has previously been denied the applicant or revoked and, if so, the circumstances of such denial or revocation.
- (6) A complete set of the applicant's fingerprints which shall be taken by the Sheriff of Scott County or his agent.
- (7) Written proof that applicant is eighteen (18) years of age or older.

Sec. 12.3.7. Investigation of Applicant for Massage Establishment Permit of Massage Technician Permit; Grounds for Denial of Application

- (a) Upon receipt of the application and fee as provided for in the preceding Sections, the Chief of Police shall make or cause to be made a thorough investigation of the criminal record of the applicant.
- (b) The Chief of Police shall deny any application for a massage establishment permit or a massage technician permit under this Ordinance after notice and hearing if the Chief of Police finds:
 - (1) That the applicant (if the applicant is a partnership or association, any partners or members thereof, or if the applicant is a corporation, any officers, directors, or shareholders owning ten percent (10%) or more of the capital stock or if one or more of the stockholders owning more than ten percent (10%) of the applicant corporation is itself a corporation and owns thirty-three percent (33%) of the stock of the applicant corporation, any officer, director, or shareholder owning ten percent (10%) or more of the capital stock) within the preceding five (5) years has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision included in Section 18.1-194 through 199 or Section 18.1-204 through 215, Virginia Code Ann. or Section 18.2-346 through 349, or Section 18.2-355 through 361 or Section 18.2-368 or Section 18.2-370, Virginia Code Ann., relating to sexual offenses; or
 - (2) That the applicant (if the applicant is a partnership or association, any partners or members thereof, or if the applicant is a corporation, any officers, directors, or shareholders owning ten percent (10%) or more of the capital stock or if one or more of

the stockholders owning more than ten percent (10%) or more of the capital stock) has been convicted, pleaded nolo contendere, or suffered a forfeiture or a charge of violating any section of this Ordinance relating to massage establishments, or a charge of violation of a similar law in any other jurisdiction; or

(3) That the applicant (if the applicant is an association or partnership, any associate or partner thereof, or if the applicant is a corporation, any officer, director, or shareholder owning ten percent (10%) or more of the capital stock) is under the age of eighteen (18) years; or

(4) That the applicant (if the applicant is a partnership or association, any partners or members thereof, or if the applicant is a corporation, any officers, directors, or shareholders owning ten percent (10%) or more of the capital stock or if one or more of the stockholders owning more than ten percent (10%) of the applicant corporation is itself a corporation and owns thirty-three percent (33%) of the stock of the applicant corporation; any officer, director, or shareholder owning ten percent (10%) or more of the capital stock) made a false statement on the application.

(c) The Chief of Police shall act upon the application within sixty (60) days from the date of the application. Notice of the hearing before the Chief of Police for denial of this application shall be given in writing, setting forth the grounds of the complaint and the time and place of hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least ten (10) days prior to the date set for hearing.

Sec. 12.3.8. Transfer of Permits

No permit issued under this Ordinance shall be transferable from one person to another.

Sec. 12.3.9. Change of Location

A change of location of a licensed massage establishment may be approved by the Chief of Police provided all applicable provisions of the Code, including this Ordinance, are complied with and a change of location fee of Fifty Dollars (\$50.00) has been paid.

ARTICLE IV -- MINIMUM STANDARDS

Sec. 12.4.1. Massage Establishment Facilities

(a) Massage establishment facilities shall be located in a proper zoning district as specified in the Zoning Ordinance of this Code.

(b) Massage establishment facilities shall comply with all requirements of the Virginia Uniform Statewide Building Code, as amended. Sanitary toilet facilities will be required as provided in the Mercantile Table, Page 1202.1 of the Basic Plumbing Code of 1970. At least one shower for each sex will be required for every forty (40) customers. At least one hand basin will be required in each room in which massages are administered. All required facilities will be located within the rental area of the establishment, and for the exclusive use of the establishment.

(c) A recognizable and legible sign shall be posted at the main entrance identifying the premises as a massage establishment.

Sec. 12.4.2. Massage Establishment Hygiene

(a) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, hand basins and all other physical facilities for the massage establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, bathtubs, hand basins and toilet rooms shall be thoroughly cleaned and disinfected at least once each day the business is in operation, and more often as needed.

(b) Clean and sanitary towels and linens and shall be provided for each patron of the establishment. No common or repeated use of unlaundered towels, or linens shall be permitted. Cabinets for the storage of clean linen shall be required, and shall be kept clean and sanitary.

(c) No massage establishment shall serve any patron when the skin of the patron is inflamed or erupted unless the patron submits a certificate from a duly licensed physician to the Director of Health stating that such inflammation or eruption is not communicable.

(d) Every massage technician shall cleanse his or her hands thoroughly with soap and hot running water immediately before serving each patron.

(e) There will be sanitary toilet facilities required on the same basis as the Mercantile Table Page 1202.1 of the Basic Plumbing Code (1970). There will be one shower per each sex massaged on the ration of one to forty. There will be a hand basin in each room where the massage is performed. All facilities must be within the rental area of the massage, and for the exclusive use of the establishment except the drinking fountain and the service sink, however, this must be on the same floor.

Sec. 12.4.3. Display of Permits and Ordinance

(a) Every person to whom a massage establishment license shall have been granted shall display said massage establishment permit in a conspicuous place in the massage establishment so that it may readily be seen by persons entering the premises.

(b) Every person to whom a massage technician permit shall have been granted shall, while in a massage establishment, display in a conspicuous place in the massage establishment said massage technician permit.

(c) A copy of the Massage Establishment Ordinance shall be displayed in a conspicuous place in the massage establishment so that it may be readily seen and ready by persons entering the premises and employees of the establishment.

Sec. 12.4.4. Right of Entry

The Director of Health and the Chief of Police are hereby authorized to enter, examine and survey during business hours any premises in Scott County for which a massage establishment license has been granted pursuant

to this Ordinance for the purpose of enforcing the provisions of the Ordinance, and for no other official purposes. This Section shall not restrict or limit the right of entry vested in any law enforcement agency.

ARTICLE V -- UNLAWFUL ACTS

Sec. 12.5.1. Unlawful Acts

(a) It shall be unlawful for anyone to engage in, conduct, or carry on a massage establishment without a valid, non-suspended permit issued pursuant to this Ordinance.

(b) It shall be unlawful for anyone to administer a massage in a massage establishment without a valid, non-suspended permit issued pursuant to this Ordinance.

(c) It shall be unlawful for any person, in a massage establishment, to expose his or her erogenous area, or any portion thereof, to any other person. It shall also be unlawful for any person, in a massage establishment, to expose the erogenous area, or any portion thereof, of any other person.

(d) It shall be unlawful for any person, in a massage establishment, to place his or her hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage, an erogenous area of any other person.

(e) It shall be unlawful for any person, while in the presence of any other person in a massage establishment, to fail to conceal with a fully opaque covering, the erogenous area of his or her body.

(f) It shall be unlawful for any person to act as a massage technician in any place other than a licensed massage establishment.

(g) It shall be unlawful for any person owning, operating, or managing a massage establishment, knowingly to cause, allow, or permit in or about such massage establishment, any agent, employee, or any other person under his control or supervision to perform such acts prohibited in Subsections (a), (b), (c), (d) or (f) of this Section.

ARTICLE VI

Sec. 12.6.1. Validity of Ordinance

Should any article, section, subsection, or provision of this massage establishment Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this massage establishment ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.