

TITLE XI: BUSINESS REGULATIONS

Chapter

110.GENERAL PROVISIONS

111.LICENSES

112.MASSAGE ESTABLISHMENTS

Charter reference:

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Privilege taxes, regulation of businesses, see § 17

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CHAPTER 110: GENERAL PROVISIONS

Section

110.01 Franchises with utility companies

110.02 Keeping of permanent register by lodging facilities

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§ 110.01 FRANCHISES WITH UTILITY COMPANIES.

The town may impose franchises on utility companies on a contract basis. The contract agreements are available in the Town Clerk's office.
(1998 Code, § 14-1)

§ 110.02 KEEPING OF PERMANENT REGISTER BY LODGING FACILITIES.

Each person who shall keep, maintain, and operate in the town any lodging facility shall keep a permanent register on which shall be entered the name and address of every person furnished lodging and the license number and state of registration of the motor vehicle, if any, being used at such time by the person furnished such lodging. The term **LODGING FACILITY** means any place offering to the public for compensation transitory lodging, or sleeping accommodations, overnight or otherwise, including, but not limited to, facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, hostels, or bed and breakfast establishments. The register provided for in this section shall be open to inspection by law enforcement officers of the town and of this state.
(1998 Code, § 14-2) Penalty, see § 110.99

Statutory reference:

Guest registers, see VA Code § 35.1-9

§ 110.99 PENALTY.

(A) Pursuant to § 110.02, if any person who keeps, maintains, and operates in the town any lodging facility shall fail or refuse to keep such register, such person shall be guilty of a class 3 misdemeanor and, upon conviction, shall be punished accordingly. The person furnished lodging shall also be guilty of a class 3 misdemeanor and, upon conviction, shall be punished accordingly if such

person shall knowingly enter or allow to be entered on such register the license number and state of registration of any motor vehicle not being used by the person for whom registered.

(B) Pursuant to § 110.02, if any person applying for or furnished any lodging at or in any lodging facility shall use any false or fictitious name, or shall enter or cause to be entered any false or fictitious name on any register provided for in this section, such person shall be guilty of a class 3 misdemeanor and, upon conviction thereof, shall be punished accordingly.

(1998 Code, § 14-2)

CHAPTER 111: LICENSES

Section

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GENERAL PROVISIONS

§ 111.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACTED RESPONSIBLY. The taxpayer: exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

AFFILIATED GROUP.

(1) One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation, which is a corporation subject to inclusion if:

(a) Stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

(b) The common parent corporation directly owns stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this section, the term “stock” does not include nonvoting stock which is limited and preferred as to dividends; the term ***CORPORATION SUBJECT TO INCLUSION*** means any corporation within the ***AFFILIATED GROUP*** irrespective of the state or country of its incorporation; and the term “receipts” includes gross receipts and gross income.

(2) Two or more corporations if five or fewer persons who are individuals, estates, or trusts own stock possessing:

(a) At least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of the stock of each corporation; and

(b) More than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(3) When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term “stock” shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

ASSESSMENT. A determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An **ASSESSMENT** shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. **ASSESSMENTS** shall be deemed made by an assessing official when a written notice of **ASSESSMENT** is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his or her last known address. **SELF-ASSESSMENTS** shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for filing or payment shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

ASSESSOR or **ASSESSING OFFICIAL.** The Town Treasurer.

BASE YEAR. The calendar year preceding the license year, except for contractors subject to the provisions of VA Code § 58.1-3715, or unless this chapter provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.

BROKER. An agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

BUSINESS. A course of dealing that requires the time, attention, and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one **BUSINESS**. The following acts shall create a rebuttable presumption that a person is engaged in a **BUSINESS**:

(1) Advertising or otherwise holding oneself out to the public as being engaged in a particular **BUSINESS**; or

(2) Filing tax returns, schedules, and documents that are required only of persons engaged in a trade or **BUSINESS**.

CARNIVAL. An aggregation of shows, amusements, concessions, eating places, and riding devices or any of them, operated together on one lot or street or on contiguous lots or streets, moving from place to place, whether or not they are owned and actually operated by separate persons.

COMMODITY. Staples such as wool, cotton, and the like, which are traded on a commodity exchange and on which there is trading in futures.

CONTRACTOR. As prescribed in VA Code § 58.1-3714(B), whether such work is done or offered to be done by day labor, general contract, or subcontract.

DEALER. Any person engaged in the business of buying and selling securities for his or her own account, but does not include a bank, or any person insofar as he or she buys or sells securities for his or her own account, either individually or in some fiduciary capacity, but not as part of a regular business.

DEFINITE PLACE OF BUSINESS. An office or a location at which occurs a regular and continuous course of dealing for 30 consecutive days or more. A **DEFINITE PLACE OF BUSINESS** for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a **DEFINITE PLACE OF BUSINESS** if there is no **DEFINITE PLACE OF BUSINESS** maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

DIRECT SELLER. Any person who:

(1) Engages in the trade or business of selling or soliciting the sale of consumer products primarily in private residences and maintains no public location for the conduct of such business;

(2) Receives remuneration for such activities, with substantially all of such remuneration being directly related to sales or other sales-oriented services rather than to the number of hours worked; and

(3) Performs such activities pursuant to a written contract between such person and the person for whom the activities are performed and such contract provides that such person will not be treated as an employee with respect to such activities for federal tax purposes.

EVENTS BEYOND THE TAXPAYER'S CONTROL. Includes, but is not limited to: the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the Assessing Official, who

was aware of the relevant facts relating to the taxpayer's business when he or she provided the erroneous information.

FINANCIAL SERVICES. The buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, and other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this chapter. Those engaged in rendering ***FINANCIAL SERVICES*** include, but without limitation, the following: buying installment receivables; chattel mortgage financing; consumer financing; credit card services; credit unions; factors; financing accounts receivable; industrial loan companies; installment financing; inventory financing; loan or mortgage brokers; loan or mortgage companies; safety deposit box companies; security and commodity brokers and services; stockbroker; and working capital financing.

GROSS RECEIPTS. The whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of VA Code §§ 58.1-3700 et seq.

ITINERANT VENDOR. Any person who engages in, does, or transacts any temporary or transient business in the town and who, for the purpose of carrying on such business, occupies any location for a period of less than one year.

ITINERANT VENDOR EVENT. Any date when any combination of five or more itinerant vendors engage in, do, or transact any temporary or transient business under common sponsorship.

LICENSE YEAR. The calendar year for which a license is issued for the privilege of engaging in business.

PEDDLER. Any person who shall carry from place to place any goods, wares, or merchandise, which he or she offers to sell or barter or actually sells or barterers.

PEDDLER AT WHOLESALE. Any person who sells or offers to sell goods, wares, or merchandise to licensed dealers, other than at a definite place of business, operated by the seller, and at the time of such sale or exposure for sale delivers or offers to deliver the goods, wares, or merchandise to the buyer. For purposes of this definition, any delivery made on the day of sale shall be construed as a ***DELIVERY AT THE TIME OF SALE.***

PERSONAL SERVICES. Rendering for compensation any repair, personal, business, or other services not specifically classified as "financial, real estate or professional service" under this chapter, or rendered in any other business or occupation not specifically classified in this chapter unless exempted from local license tax by VA Code Title 58.1.

PROFESSIONAL SERVICES. Services performed by architects, attorneys at law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment, and cure or alleviation of human physical or mental ailments, conditions, diseases, pain, or infirmities) and such occupations, and no others, as the State Department of Taxation may list in the BPOL guidelines promulgated pursuant to VA Code § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word “profession” implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

PURCHASES. All goods, wares, and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares, and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares, and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

REAL ESTATE SERVICES. Providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property unless the service is otherwise specifically provided for in this chapter and such services include, but are not limited to, the following: appraisers of real estate; escrow agents, real estate; fiduciaries, real estate; lessors of real property; real estate agents, brokers and managers; real estate selling agents; and rental agents for real estate.

RETAILER or RETAIL MERCHANT. Any person who sells goods, wares, and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial, and industrial users.

SECURITY. Has the same meaning as in the Securities Act (VA Code §§ 13.1-501 et seq.) or in similar laws of the United States regulating the sale of securities.

SERVICES. Things purchased by a customer that do not have physical characteristics, or are not goods, wares, or merchandise.

SPONSOR. Any person that organizes an itinerant vendor event or solicits and receives applications from itinerant vendors for participation in such an event.

WHOLESALE or WHOLESALE MERCHANT. Any person who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares, and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government, and industrial users that, because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale.

(1998 Code, § 14-36)

§ 111.02 OVERRIDING CONFLICTING ORDINANCES.

Except as may be otherwise provided by the laws of the state, and notwithstanding any other ordinances or resolutions enacted by the Town Council, whether or not codified in this code, to the extent of any conflict, the provisions of this chapter shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions, and callings and upon the persons engaged in such businesses, trades, professions, and callings within the town.

(1998 Code, § 14-37)

§ 111.03 PURPOSE OF CHAPTER.

It is the purpose and policy of the Town Council in this chapter to equalize as far as practicable the burden of license taxation among those liable to taxation, by adopting for general application, but subject to any restrictions or exceptions imposed by state or federal law, or to any restrictions or exceptions as may be imposed specifically in this chapter, a system of license taxes measured by classified gross receipts of the business, profession, trade, or occupation in respect to which the tax is levied. The license tax shall be for the support of town government and for the payment of the debt of the town.

(1998 Code, § 14-38)

§ 111.04 LICENSE REQUIREMENT.

(A) Every person in the town engaging in any business, trade, profession, occupation, or calling, unless otherwise exempted by law, shall apply for a license for each such business, trade, profession, occupation, or calling if such person maintains a definite place of business in the town; such person does not maintain a definite place of business anywhere but the person resides in the town, which residence for the purposes of this chapter shall be deemed a definite place of business; or there is no definite place of business in the town but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival, or circus as specified in VA Code §§ 58.1-3717, 58.1-3718, or 58.1-3728, respectively, or is a contractor subject to VA Code § 58.1-3715, or is a public service corporation subject to VA Code § 58.1-3731. A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:

(1) Each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of the town;

(2) All of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and

(3) The taxpayer agrees to supply such information as the Assessor may require concerning the nature of the several businesses and their gross receipts.

(B) Each person subject to a license tax shall apply for a license prior to beginning business if he or she was not subject to licensing in the town on or before January 1 of the license year, or no later than March 1 of the current license year if he or she had been issued a license for the preceding license year. The application shall be on forms prescribed by the Town Treasurer.

(C) The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by gross receipts of the business, the tax shall be paid on or before May 31.

(D) The Town Treasurer may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of 10% of the portion paid after the due date.

(E) A penalty of 10% of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the Assessing Official if both the application and payment are late; however, both penalties may be assessed if the Town Treasurer determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the Town Treasurer, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless, or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the Town Treasurer is not paid within 30 days, the Town Treasurer may impose a 10% late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the Town Treasurer, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he or she acted responsibly and that the failure was due to events beyond his or her control. The terms "acted responsibly" and "events beyond the taxpayer's control" are defined in VA Code § 58.1-3703.1.

(F) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the Assessing Official is found to be erroneous, all interest and any penalties charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any BPOL tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under VA Code § 58.1-3916. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund or the due date of the tax, whichever is later.

(1998 Code, § 14-40) (Ord. O-2007-3, passed 9-11-2007) Penalty, see § 111.99

§ 111.05 SITUS OF GROSS RECEIPTS.

(A) *General rule.* Whenever the tax imposed by this chapter is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within the town. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows.

(1) The gross receipts of a contractor shall be attributed to the definite place of business at which his or her services are performed, or if his or her services are not performed at any definite place of business, then the definite place of business from which his or her services are directed or controlled, unless the contractor is subject to the provisions of VA Code § 58.1-3715.

(2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares, and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures may apply to the State Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.

(3) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.

(4) The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.

(B) *Apportionment.* If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule and the affected jurisdictions are unable to reach an apportionment agreement, except as to circumstances set forth in VA Code § 58.1-3709, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at or were controlled from such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to the

town solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

(C) *Agreements.* The Assessor may enter into agreements with any other political subdivision of the state concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has resulted or is likely to result in taxes on more than 100% of its gross receipts from all locations in the affected jurisdictions, the Assessor shall make a good-faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the Assessor or taxpayer may seek an advisory opinion from the State Department of Taxation pursuant to VA Code § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the provisions of VA Code § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political subdivisions of the state have assessed taxes on gross receipts that may create a double assessment within the meaning of VA Code § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.
(1998 Code, § 14-41)

§ 111.06 LIMITATIONS AND EXTENSIONS.

(A) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this chapter, both the Assessing Official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(B) Notwithstanding VA Code § 58.1-3903, the Assessing Official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.

(C) The period for collecting any local license tax shall not expire prior to the period specified in VA Code § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this section, two years after the final determination of an appeal for which collection has been stayed pursuant to § 111.07(B) and (D), or two years after the final decision in a court application pursuant to VA Code § 58.1-3984, or similar law for which collection has been stayed, whichever is later.
(1998 Code, § 14-42)

§ 111.07 APPEALS AND RULINGS.

(A) Any person assessed with a licensing tax under this chapter as the result of an audit may apply within 90 days from the date of the assessment to the Assessing Official for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The Assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, a further audit, or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct. The Assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).

(B) Provided a complete application is made within 90 days of an assessment, collection activity shall be suspended until a final determination is issued by the Assessor, unless the Assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of § 111.04(F), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires to depart quickly from the town, to remove his or her property from the town, to conceal himself or his or her property in the town, or to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

(C) Any person assessed with a license tax under this chapter as a result of an audit may apply within 90 days of the determination by the Assessing Official on an application pursuant to division (A) above to the State Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application unless the taxpayer and the Assessing Official are notified that a longer period will be required. The application shall be treated as an application pursuant to VA Code § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to VA Code § 58.1-1822. Following such an order, either the taxpayer or the Assessing Official may apply to the appropriate Circuit Court pursuant to VA Code § 58.1-3984. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the State Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

(D) On receipt of a notice of intent to file an appeal to the Tax Commissioner under division (C) above, the Assessing Official shall further suspend collection activity until a final determination is issued by the Tax Commissioner unless the Assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of § 111.04(F), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in division (B) above.

(E) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the Assessor. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if there is a change in the law, a court decision, or the guidelines issued by the State Department of Taxation upon which the ruling was based or the Assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling that later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

(1998 Code, § 14-43)

§ 111.08 RECORD KEEPING AND AUDITS.

Every person who is assessable with a license tax shall keep sufficient records to enable the Assessor to verify the correctness of the tax paid for the license years assessable and to enable the Assessor to ascertain the correct amount of tax that was assessable for each of those years. All such records, books of accounts, and other information shall be open to inspection and examination by the Assessor in order to allow the Assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the town. The Assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. If the records are maintained outside the town, copies of the appropriate books and records shall be sent to the Assessor's office upon demand.

(1998 Code, § 14-44)

§ 111.09 EXCLUSIONS AND DEDUCTIONS FROM GROSS RECEIPTS.

(A) *General rule.* Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(B) *Exclusions.* The following items shall be excluded from gross receipts:

(1) Amounts received and paid to the United States, the state or any county, city, or town for the state retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, or for any federal or state excise taxes on motor fuels;

(2) Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales that have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business);

(3) Any amount representing returns and allowances granted by the business to its customer;

(4) Receipts that are the proceeds of a loan transaction in which the licensee is the obligor;

(5) Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset;

(6) Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services, shall not be considered a rebate or discount to the licensee but shall be included in the licensee's gross receipts, together with any handling or other fees related to the incentive;

(7) Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes; and

(8) Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends, and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees, and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

(C) *Deductions.* The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:

(1) Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to such entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property that was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation; and

(2) Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.
(1998 Code, § 14-45)

§ 111.10 LICENSE FEE AND TAX.

(A) Every person or business subject to licensure under this chapter shall be assessed and required to pay annually the license fee set forth in this section. Except as may be specifically

otherwise provided by ordinance or other law, the minimum annual license tax imposed in this section shall be \$30.

(B) The annual license tax imposed shall be at the rate set forth in this section for those classes or enterprises listed in this section and shall be on all the gross receipts of such persons includable as provided in this chapter:

(1) For contractors and persons constructing for their own account for sale, \$0.16 per \$100 of gross receipts (VA Code §§ 58.1-3706, 58.1-3714, and 58.1-3715);

(2) For retailers, \$0.20 per \$100 of gross receipts (VA Code § 58.1-3706);

(3) For financial, real estate, and professional services, \$0.33 per \$100 of gross receipts (VA Code § 58.1-3706);

(4) For repair, personal, and business services and all other businesses and occupations not specifically listed or exempted in this chapter or otherwise by law, \$0.20 per \$100 of gross receipts (VA Code § 58.1-3706);

(5) For wholesalers, \$0.05 per \$100 of purchases (VA Code § 58.1-3716);

(6) Hotels, motels, lodging, and the like, \$0.26 per \$100 of gross receipts (VA Code § 58.1-3703(C)(7));

(7) For photographers, with no regularly established place of business in the state, \$10 per year (VA Code § 58.1-3727); and

(8) For savings and loan associations and state-chartered credit unions, \$50 per year (VA Code § 58.1-3730).
(1998 Code, § 14-46)

§ 111.11 PROCEDURE FOR OBTAINING LICENSE GENERALLY.

(A) Every person liable for the payment of a license tax under the provisions of this chapter shall make application at the office of the Town Treasurer and shall provide proof of the amount of gross receipts of such business, except as in the case of a beginner.

(B) The Town Clerk shall furnish license application forms, which shall provide spaces for the:

(1) Correct name and trade name of the applicant;

(2) Correct residence of the applicant;

(3) Nature of the business, profession, trade, or occupation for which request of such license is being made;

(4) Place where such business, profession, trade, or occupation is to be pursued; and

(5) Federal income tax identification number of the applicant.

(C) For all licenses, the Town Treasurer shall require a sworn statement from the applicant of the amount of gross receipts of such business, profession, trade, or occupation for the previous year, except as in the case of a beginner.

(D) The application shall in all cases be signed personally by the person who authenticates the federal income tax returns for the business, profession, trade, or occupation.

(E) The Town Treasurer shall assess such applicant, or other person of whom a license is required, with the license tax as required by this chapter. Upon the payment of the required license tax to the Town Treasurer, the Town Treasurer shall note the receipt of such payment on the license application form and furnish a receipted copy to the applicant.

(1998 Code, § 14-47)

§ 111.12 ASSESSMENT OF ADDITIONAL TAX.

(A) Whenever the Town Treasurer shall ascertain that any person shall be assessed with any additional license tax pursuant to the provisions of this chapter, the Treasurer shall assess such person in writing with such additional license tax as may be due.

(B) If such additional assessment shall be paid within 30 days from the date of such additional assessment, no penalty shall accrue. If such additional assessment shall not be paid within 30 days from the date of such additional assessment, interest at the rate of 10% per annum shall accrue from the date of the additional assessment until the time of payment.

(1998 Code, § 14-48)

§ 111.13 PRORATION OF LICENSE TAXES.

If a person ceases to engage in a business, trade, profession, or calling within the town during a year for which a license tax based on gross receipts has already been paid, the taxpayer shall be entitled, upon application, to a refund for that portion of the license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised within the town. The town may elect to remit any refunds in the ensuing fiscal year and may offset against such refund any amount of past-due taxes owed by the same taxpayer. In no event shall the town be required to refund any part of a flat fee or minimum flat tax.

(1998 Code, § 14-49)

§ 111.14 BEGINNER'S LICENSE.

(A) Every person who, during any calendar year, begins a business, profession, trade, or occupation subject to a license tax under the provisions of this chapter shall estimate the amount of the gross receipts expected between the date of beginning business and the end of the then-current license year. Such estimate shall be included in the license application form, and the license tax for the then-current year shall be computed based on such estimate.

(B) Each such beginning business shall submit to the Town Treasurer, not later than July 30 following the business's first license year, a report of actual gross receipts for the preceding year.

(C) Whenever a license tax for a beginning business is so computed, any estimate found to be erroneous upon a report of actual gross receipts as required by division (B) above shall be subject to correction. The Treasurer shall assess such person with any additional license tax found to be due at the end of the license year and shall at the same time correct the estimate for the then-current license year. Such additional license tax shall be subject to a penalty of 10% and interest of 10% per annum from the date of the original estimate if the estimate proves to be unreasonable. Estimates will be deemed unreasonable if they are less than 80% of the actual taxes ultimately due. In case of an overestimate, the taxpayer shall be entitled to a credit upon his or her license tax payable the following year. (1998 Code, § 14-50) (Ord. passed 1-13-1998)

§ 111.15 LICENSE TO BE PERSONAL PRIVILEGE; SUSPENSION.

Every license issued under this chapter shall be deemed to confer a personal privilege to transact, carry on, or conduct the business, trade, or occupation that may be subject to the license, and shall not be exercised except by the person licensed. If it is determined that such individual to whom the license has been issued shall have transferred the license, except as otherwise prescribed in § 111.16, or if the Town Treasurer has cause to believe that such person is otherwise abusing the privilege for which the license was issued, the official may suspend such license. Such suspension shall remain in effect until the causes are removed. The official shall report this action to the Town Council at its next regular business meeting after the effective date of the suspension. (1998 Code, § 14-51)

§ 111.16 TRANSFERABILITY.

A license issued under this chapter shall not be transferred from one person to another. A new owner is required to obtain a beginner's license in accordance with § 111.14. If a business changes name without change of ownership, the change shall be so stated in writing to the Town Treasurer. (1998 Code, § 14-52)

§ 111.17 MULTIPLE PLACES OF BUSINESS.

No single license shall be issued under this chapter to cover more than one place of business.
(1998 Code, § 14-53)

§ 111.18 CORPORATIONS AND PARTNERSHIPS.

When the business, profession, trade, or occupation taxed is conducted by a corporation or partnership, the license tax shall be imposed upon the gross receipts or gross expenditures of the corporation or the partnership, and paid by it, and when so paid, and also when paid by an individual employing persons who otherwise would be liable to a license, it shall be deemed to discharge the license tax liability of the officers and partners of such corporation and partnership and of such persons employed by an employer who otherwise would be liable to such tax, insofar as the licensed business, profession, trade, or occupation is concerned.
(1998 Code, § 14-54)

§ 111.19 TREASURER AS ENFORCEMENT OFFICIAL; PRODUCTION OF BOOKS AND PAPERS.

The Town Treasurer is given the responsibility of enforcing the provisions of this chapter. The Treasurer may, for the purpose of collecting all taxes due, summon the taxpayer or any other person to appear at the Treasurer's office to answer under oath questions touching the tax liability of any and all taxpayers involved in the business.
(1998 Code, § 14-55) Penalty, see § 111.99

§ 111.20 DISPLAY OF LICENSE.

The license form issued to show payment of the license taxes imposed by any section of this chapter shall be displayed in a conspicuous place at the regular place of business of the licensee, which license shall be produced by the licensee upon request of any authorized enforcement officer of the town for inspection. All licensees who maintain no regular place of business shall carry on or about their persons the license form issued to show payment of the license tax, which shall be produced by the licensee on request of any authorized enforcement officer for his or her inspection.
(1998 Code, § 14-56) Penalty, see § 111.99

§ 111.21 COMPLIANCE WITH ZONING AND OTHER REGULATIONS.

(A) The Town Treasurer shall not issue a license for conducting any business, profession, trade, or occupation at a location where the conduct of such business, profession, trade, or occupation is prohibited by Chapter 157 of this code.

(B) All such licenses shall be subject to verification to ascertain compliance with the zoning, federal, state, and local regulations and all other applications. Failure to comply shall be just cause for immediate revocation by the Town Treasurer.
(1998 Code, § 14-57)

SPECIAL LICENSE TAX PROVISIONS

§ 111.35 CARNIVALS, CIRCUSES, PERFORMANCES, CERTAIN RESTRICTIONS.

(A) There shall be a license tax of \$1,000 for each performance given by carnivals and circuses operated within the limits of the town. Such tax shall be paid before any performance is held. Until such tax has been paid, the town shall have a lien upon the property of such carnival or circus to the extent of the unpaid tax.

(B) A resident mechanic or artist may exhibit any production of his or her own art or invention without compensation; and no registration, bond, or license shall be required of any industrial arts exhibit or of any agricultural fair or the shows exhibited within the grounds of such fair during the period of such fair, whether an admission is charged or not. In addition, no registration, bond, or license shall be required of resident persons performing in a show or exhibition for charity, or other benevolent purposes, or of exhibitions of volunteer fire companies, whether an admission is charged or not. Whenever such show, exhibition or performance is given, whether licensed or exempted by the terms of this division (B), those persons performing or acting in a show, exhibition, or performance and operating under either license or exemption shall be exempt from such tax.

(C) The provisions of division (B) above shall not be construed to allow, without payment of the tax imposed by this section, a performance for charitable or benevolent purposes by a company, association, or persons or a corporation in the business of giving such exhibitions, no matter what terms of contract may be entered into, or under what auspices such exhibition is given by such company, association, persons, or corporation. It is the intent and meaning of this section that every company, association, person, or corporation in the business of giving exhibitions for compensation, whether a part of the proceeds are for charitable or benevolent purposes or not, shall pay the tax imposed by the authority of this section. However, no tax shall be imposed on a bona fide local association or corporation organized for the principal purpose of holding legitimate agricultural exhibitions or industrial arts exhibits when they rent or lease fair or exhibition grounds or buildings for the purpose of giving such exhibitions or performances and exhibit agriculture or industrial arts products as a part of such exhibition.

(1998 Code, § 14-91) Penalty, see § 111.99

§ 111.36 FORTUNETELLERS, CLAIRVOYANTS, AND PRACTITIONERS OF PALMISTRY OR PHRENOLOGY.

Any person who, for compensation, shall pretend to tell fortunes, assume to act as a clairvoyant, or to practice palmistry or phrenology shall be deemed a fortuneteller and shall pay to the town an annual license tax of \$1,000.

(1998 Code, § 14-92) Penalty, see § 111.99

§ 111.37 PEDDLERS; ITINERANT VENDORS.

A peddler or an itinerant vendor shall pay for the privilege of conducting such business an annual license fee of \$500. This section shall not apply to a peddler at wholesale or to those who sell or offer for sale, in person or by his or her employees, ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits, or other family supplies of a perishable nature, or farm products grown or produced by them, and not purchased by them for sale. This section shall not apply to participants of an itinerant vendor event provided that the sponsor of each itinerant vendor event complies with § 111.38.

(1998 Code, § 14-93) Penalty, see § 111.99

§ 111.38 ITINERANT VENDOR EVENTS.

(A) *Exemptions.* No person shall be exempt from the provisions of this section by reason of associating temporarily with any local dealer, trader, or merchant, or by reason of conducting such temporary or transient business in connection with or as part of the business in the name of any local dealer, trader, or merchant.

(B) *Permit for sponsors.* It shall be unlawful for any itinerant vendor to engage in any itinerant vendor event without the sponsor's first obtaining and possessing a valid permit issued pursuant to this section. Sponsors of itinerant vendor events shall apply for a permit to conduct an itinerant vendor event, which permit will be valid for the duration of the event but shall not be valid for more than five days. The application for such a permit shall contain the following information:

- (1) Name and business address of the sponsor;
- (2) The number of vendors in the event;
- (3) The location of the itinerant vendor event;
- (4) An estimate of the number of people it is anticipated the event will draw;

(5) A plan for the handling of traffic and parking. If the event coincides with Occoquan Days (first weekend in June) or the Fall Craft Show (last weekend in September), traffic flow shall comply with established patterns; and the sponsor shall instruct vendors to follow that pattern; and

(6) A description of how the safety and welfare needs of attendees shall be met (bathroom facilities, first aid, and the like).

(C) *Public property, recognition; fees.*

(1) The town recognizes two shows to be held on public property: the Occoquan Town Spring Craft Show (first weekend in June) and the Occoquan Town Fall Craft Show (last weekend in September).

(2) The Occoquan Town Craft Show Committee shall establish and collect all fees. All profits from both shows shall be submitted to the town for use in the budget. An income and expense statement shall be provided by the Town Treasurer for the audit.

(D) *Private property; filing date; fees.*

(1) An application for an itinerant vendor event on private property shall be filed with the Town Clerk 45 days prior to the event.

(2) The fee for an itinerant vendor event on private property shall be \$2,500.

(3) No permit issued under this section shall be transferable.

(1998 Code, § 14-94) (Ord. O-2007-02, passed 6-12-2007) Penalty, see § 111.99

§ 111.39 PEDDLERS AT WHOLESALE.

Any person who is deemed a peddler at wholesale shall pay for the privilege an annual license tax equal to the rate imposed by the town on a wholesale merchant selling similar goods, wares, or merchandise in the town at one definite place of business.

(1998 Code, § 14-96) Penalty, see § 111.99

§ 111.40 DIRECT SELLERS.

No license tax shall be levied on a direct seller unless the total sales of such seller exceed \$4,000 per year. The rate of tax levied on a direct seller whose total sales exceed \$4,000 per year shall be the same as that charged for retail merchants or wholesale merchants, whichever is applicable. The situs for the tax shall be where such person maintains his or her place of abode.

(1998 Code, § 14-97)

§ 111.41 LIMITATIONS ON LICENSE TAXES IMPOSED ON PEDDLERS, ITINERANT VENDORS, AND PEDDLERS AT WHOLESALE.

Any license tax imposed on peddlers or itinerant vendors or on peddlers at wholesale shall not apply to a:

(A) Licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants;

(B) Distributor or vendor of motor fuels and petroleum products;

(C) Distributor or vendor of seafood, who catches seafood and sells only the seafood caught by him or her;

(D) Farmer or producer of agricultural products who sells only the farm or agricultural products produced or grown by him or her;

(E) Farmers' cooperative association; and/or

(F) Manufacturer who is subject to state tax on intangible personal property who peddles at wholesale only the goods, wares, or merchandise manufactured by him or her at a plant whose intangible personal property is taxed by this state.

(1998 Code, § 14-98)

§ 111.42 USE OF STREETS.

No licensed peddler, licensed itinerant merchant, or other licensed business shall conduct business from a location in the public streets or rights-of-way except by express permission of the Town Council.

(1998 Code, § 14-99) Penalty, see § 111.99

§ 111.43 WATER OR SEWER, HEAT, LIGHT, POWER, AND GAS COMPANIES.

(A) Every person or business entity furnishing water or sewer, heat, light, power, or gas for domestic, commercial, and industrial consumption in the town shall be assessed by the Treasurer and pay for the privilege 0.5% of the gross receipts, as hereinabove defined, accruing from sales to the ultimate consumer within the town during the next preceding year, calendar or fiscal, excluding such service furnished to federal, state, and local public authorities and offices thereof and excluding such service furnished to other electric utilities for resale.

(B) After December 31, 2000, the license tax authorized by this section shall not be imposed on pipeline distribution companies as defined in VA Code § 58.1-2600, or on gas suppliers, gas utilities, or electric suppliers, as defined in VA Code § 58.1-400.2, except as provided in VA Code § 58.1-2901D.

(1998 Code, § 14-100) (Ord. O-2001-02, passed 12-5-2000)

CLASSIFIED BUSINESS AND OCCUPATIONAL PROVISIONS

§ 111.55 RETAIL MERCHANTS; EXCEPTIONS.

The license tax imposed on retail merchants shall not apply to unpaid agents or members of a nonprofit organization conducting a sale for the purpose of raising money to be used solely for charitable, community service, nonprofit recreational, or religious purposes, consistent with the organization's charter or organizational purposes.

(1998 Code, § 14-121)

§ 111.56 RELATIONSHIP TO LICENSING REQUIREMENTS OF THE STATE.

In all cases in which the state imposes a license tax in connection with a business, profession, or employment, the applicant for a town license under this chapter shall present satisfactory evidence of having secured the requisite state license before a town license shall be issued.

(1998 Code, § 14-122)

§ 111.57 RESTAURANTS.

No license required under this chapter shall be issued to a restaurant or eating place unless there shall have been first presented to the Town Treasurer a certificate of approval of such restaurant or eating place issued by the Health Department.

(1998 Code, § 14-123)

§ 111.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) It shall be unlawful for any person to willfully fail or refuse to file application for a business license at the times required in this chapter or to make a false statement with intent to defraud in such application. If the amount of the tax lawfully assessed in connection with the application is \$2,500 or less, the person shall be subject to a fine of not more than \$500. If the amount of the tax lawfully assessed in connection with the return is more than \$2,500, the person may be confined in jail for not more than 12 months and fined not more than \$1,000, either or both.

(1998 Code, § 14-39)

(C) Pursuant to § 111.19, any person who refuses to answer under oath questions touching any person's tax liability shall be deemed guilty of a class 4 misdemeanor.

(1998 Code, § 14-55)

(D) Every person who exhibits or gives a performance or exhibition of any of the shows, carnivals or circuses described in § 111.35, without the license required, shall be fined not less than \$50 nor more than \$500 for each offense.

(1998 Code, § 14-91)

(E) Pursuant to § 111.36, any person who engages in business as a fortuneteller without the license required shall be guilty of a class 3 misdemeanor.

(1998 Code, § 14-92)

(F) Any person violating any provision of sections §§ 111.37 or 111.38 shall be guilty of a class 2 misdemeanor.

(1998 Code, § 14-95)

CHAPTER 112: MASSAGE ESTABLISHMENTS

Section

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GENERAL PROVISIONS

§ 112.01 DECLARATION OF FINDINGS AND POLICY.

It is declared that the Town Council has found it necessary and proper to exercise its police power for the protection of the health, safety, and general welfare of its citizens by providing for the licensing and regulation of massage therapists, massage establishments, and out-call massage services. (1998 Code, § 14-156) (Ord. passed 6-23-1997)

§ 112.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DIRECTOR. The Director of the County Health District, or his or her designee.

MASSAGE ESTABLISHMENT. Any establishment having a fixed place of business where massages are administered. The term ***MASSAGE ESTABLISHMENT*** shall include, but shall not be limited to, massage parlors, health clubs, sauna baths, and steam baths, and similar type businesses, whether such business is a public or private facility. This definition shall not be construed to include:

- (1) A hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or physical therapist duly licensed by the state;
- (2) Barbershops or beauty salons in which massages are administered only to the feet, scalp, the face, the neck, or the shoulders; or
- (3) 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, or athletic facilities and facilities for the welfare of residents in the area.

MASSAGE THERAPIST. Any individual who administers a massage to another individual at a massage establishment or as part of an out-call massage service for pay and who meets the qualifications of and is currently certified as a ***MASSAGE THERAPIST*** by the Board of Nursing of

the state. This definition shall not be construed to include a physician, surgeon, chiropractor, osteopath, physical therapist, or nurse duly licensed by the state.

MASSAGE THERAPY. The treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on manipulation or application of pressure to the muscular structure or soft tissues of the human body. The terms ***MASSAGE THERAPY*** and ***THERAPEUTIC MASSAGE*** do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

OUT-CALL MASSAGE SERVICE. Any business which provides, engages in, or carries on massages at a location designated by the customer, client, massage therapist, or other person, which location is other than at a massage establishment.

SEXUAL OR GENITAL PARTS. The pubic area, penis, scrotum, vulva, perineum, anus, or female breasts.

(1998 Code, § 14-157) (Ord. passed 6-23-1997)

§ 112.03 RIGHT OF ENTRY TO ENFORCE CHAPTER.

The Director of Health, the Director of the Fire and Rescue Service, the Town Sergeant, the Zoning Administrator, and the Building/Code Official, or their duly authorized agents, are authorized to enter, examine, and survey, during business hours, any premises in the town for which a massage establishment permit has been issued pursuant to this chapter, for the purpose of enforcing the provisions. This section shall not restrict or limit the right of entry vested in any law enforcement agency.

(1998 Code, § 14-159) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.04 REVOCATION OR SUSPENSION OF PERMITS ISSUED UNDER CHAPTER.

(A) (1) Any massage establishment permit or massage therapist's permit granted under this chapter shall be revoked by the Director, after notice and hearing, if the permittee (if the permittee is a partnership or association, any partner or member thereof, or if the permittee is a corporation, any officer, director, or shareholder owning 10% or more of its capital stock):

(a) Has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision of VA Code §§ 18.2-346 through 18.2-349, 18.2-355 through 18.2-361, 18.2-368, or 18.2-370, which laws relate to sexual offenses, or any provision of a similar ordinance of the town or law or ordinance of another jurisdiction;

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

(c) Has made a false statement on the application for the permit; or

(d) Has failed to make the report required by § 112.08.

(2) Notice of the hearing before the Director 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 days prior to the date set for the hearing.

(B) If the Director finds that a massage establishment for which a massage establishment permit has been issued under this chapter does not conform to the standards set forth in this chapter, or that the permittee has refused the Director or other authorized person the right to enter the premises to enforce the provisions of this chapter, the Director may enter an order for the immediate suspension of the massage establishment permit until such time as he or she finds that the reason for such suspension no longer exists. The order shall set forth the reasons for the suspension. A copy of the order shall be sent to the permittee at his or her place of business by certified mail. The permittee shall be afforded an opportunity to be heard by the Director within 12 days after the suspension. Notice of the hearing shall be mailed, by certified mail to the permittee's business address, at least ten days prior to the date set for the hearing. No person shall operate a massage establishment when subject to an order of suspension. (1998 Code, § 14-160) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.05 COMPLIANCE WITH CHAPTER 157 OF THIS CODE AND BUILDING CODE.

(A) Massage establishments shall be located in a proper zoning district, as specified in Chapter 157 of this code.

(B) Each such establishment and its facilities shall be in conformity with all applicable requirements of the State Uniform Statewide Building Code. (1998 Code, § 14-161) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.06 ENTRANCE SIGN.

A recognizable and legible sign shall be posted at the main entrance of each massage establishment identifying the premises as a massage establishment. Any sign shall comply with the requirements of town ordinances. (1998 Code, § 14-162) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.07 DISPLAY OF COPY OF CHAPTER.

A copy of this chapter shall be displayed in a conspicuous place in every massage establishment, so that it may be readily seen and read by persons entering the premises and employees of the establishment. (1998 Code, § 14-163) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.08 INFORMATION TO BE REPORTED TO DIRECTOR.

(A) Each person to whom a massage establishment permit is issued under §§ 112.25 through 112.32 shall report to the Director any change in any of the information required by § 112.26, such report to be made within 14 days of learning of the change.

(B) Each holder of a massage therapist's permit issued under §§ 112.45 through 112.54 shall report to the Director any change in any of the information required in § 112.46, such report to be made within 14 days of learning of the change.

(1998 Code, § 14-164) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.09 REQUIREMENTS FOR MASSAGE ESTABLISHMENTS.

(A) Minimum lighting shall be provided in accordance with the State Uniform Statewide Building Code.

(B) Minimum ventilation shall be provided in accordance with the State Uniform Statewide Building Code.

(C) Adequate equipment for disinfecting and sterilizing any instruments used for massage shall be provided.

(D) Hot and cold running water shall be provided.

(E) Adequate separate dressing, bathing, and toilet facilities shall be provided for patrons. The facilities for one gender shall be segregated from those for the other.

(F) Walls, ceilings, floors, steam rooms, and all other physical facilities for the establishment shall be kept in good repair and maintained in a sanitary condition.

(G) Clean towels and linens shall be provided for patrons receiving massage services. No common use of towels or linens shall be permitted.

(1998 Code, § 14-165) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.10 CLEANLINESS OF THERAPISTS.

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

(1998 Code, § 14-166) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.11 SERVING PERSONS WITH SKIN INFLAMMATION OR ERUPTIONS.

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.

(1998 Code, § 14-167) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.12 MASSAGING, EXPOSING SEXUAL OR GENITAL PARTS.

(A) 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 a sexual or genital part of any other person.

(B) It shall be unlawful for any person in a massage establishment to expose his or her sexual or genital parts, or any portion, to any other person. It shall also be unlawful for any person in a massage establishment to expose the sexual or genital parts, or any portion, of any other person.

(C) 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 sexual or genital parts of his or her body.

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

(1998 Code, § 14-168) (Ord. passed 6-23-1997) Penalty, see § 112.99

ESTABLISHMENT PERMIT

§ 112.25 REQUIRED.

It shall be unlawful for any person to own, operate, or conduct a massage establishment without a valid, non-suspended permit issued pursuant to this chapter for such establishment.

(1998 Code, § 14-191) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.26 APPLICATION.

(A) Each application for a massage establishment permit required by this chapter shall be upon a form provided by the Director and shall be submitted to the Director. Each such application 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 the establishment;
- (3) The name and residential address of the applicant. If the applicant is an association or a partnership, the names and residence addresses of each of the associates or partners. If the applicant is a corporation, the names and residence addresses of each of the officers and directors of such corporation, and of each stockholder owning more than 10% of the stock of the corporation. If one or more of the stockholders owning more than 10% of the applicant corporation is itself a corporation, the names and residence addresses of each of the officers and directors of such corporation and of each stockholder owning more than 10% of the stock of the corporation;
- (4) If the applicant is an individual, all other addresses of the applicant for the three-year period immediately prior to the application. If the applicant is an association or a partnership, the names and addresses of each associate partner for the three-year period immediately prior to the application. If the applicant is a corporation, all of the addresses for a three-year period of each of the officers and directors of such corporation and of each stockholder owning more than 10% of the stock of the corporation;
- (5) If the applicant is an individual, the birth date of the applicant. If the applicant is a partnership, the birth date of each partner. If the applicant is a corporation, the birth date of each of the officers and directors of such corporation and of each stockholder owning more than 10% of the stock of the corporation;
- (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 associate's or partner's fingerprints. If the applicant is a corporation, a complete set of fingerprints of each of the officers and directors of the corporation and each stockholder owning more than 10% of the stock of the corporation. The fingerprints shall be taken by the Town Sergeant or his or her agent;
- (7) If the applicant is an individual, the business, occupation, or employment of the applicant for the three-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-year period immediately prior to the date of the application. If the applicant is a corporation, the business occupation or employment of each officer or director and each of the stockholders owning more than 10% of the stock of the applicant corporation;
- (8) The history of the applicant in the operation of massage establishments or a similar business or occupation including, but not limited to, whether or not such person, in previously operating in this town or another town, city, or state under a permit or license, has had such permit or license revoked or suspended and the reason for revocation or suspension, 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 or traffic infractions, 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 10% of the stock of the applicant corporation; and

(10) The name of the operator or manager of the massage establishment. If the operator or manager of the massage establishment is not an applicant, the operator or manager must provide the information required in this section relative to the applicant.

(B) Each application for a massage establishment permit shall be accompanied by an investigation fee of \$65, no part of which shall be refundable. Such fee shall be in addition to any permit fee required by this chapter and any business license tax imposed by the town.
(1998 Code, § 14-192) (Ord. passed 6-23-1997)

§ 112.27 INSPECTION OF APPLICANT'S PREMISES.

Upon receipt of an application for a permit under this chapter, the Director shall refer the application to the Building/Code Official, the Director of the Fire and Rescue Service, the Town Sergeant and the Zoning Administrator, each of whom, within a period of 21 days from the date of the application, shall review records and make an inspection of the premises proposed to be used as a massage establishment and shall make a written report to the Director concerning compliance with the law.

(1998 Code, § 14-193) (Ord. passed 6-23-1997)

§ 112.28 FEE.

The annual fee for a massage establishment permit shall be \$25, which fee shall be paid prior to the issuance or renewal of the permit. Such fee shall be in addition to any business license tax imposed by the town.

(1998 Code, § 14-194) (Ord. passed 6-23-1997)

§ 112.29 ISSUANCE OR DENIAL.

(A) A massage establishment permit shall be issued by the Director when all provisions of this chapter have been complied with if he or she determines, from the inspections and reports provided for in § 112.27 and from the information contained in the permit application, that the establishment meets the requirements of this chapter and that the applicant is qualified under the requirements of this chapter to engage in such business in the town.

(B) Such permit shall be denied if the Director finds any condition to exist that would be grounds for the revocation of a permit under § 112.04.

(1998 Code, § 14-195) (Ord. passed 6-23-1997)

§ 112.30 TERM.

A permit issued under this chapter shall be valid for one year from the date of issuance unless sooner suspended or revoked pursuant to § 112.04.

(1998 Code, § 14-196) (Ord. passed 6-23-1997)

§ 112.31 DISPLAY.

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

(1998 Code, § 14-197) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.32 TRANSFER.

No permit issued under this chapter shall be transferable from one person to another. A change of location of a massage establishment may be approved by the Director and the establishment's permit transferred to the new location, provided all applicable provisions of this chapter are complied with.

(1998 Code, § 14-198) (Ord. passed 6-23-1997)

MESSAGE THERAPIST PERMIT

§ 112.45 REQUIRED.

It shall be unlawful for any person to administer a massage in a massage establishment or as part of an out-call massage service unless he or she has a valid unsuspended massage therapist's permit issued pursuant to this subchapter and is certified as a massage therapist by the Board of Nursing of the state or has been specifically exempted from the definition of "massage therapy" in § 112.02. It shall be unlawful for the owner, operator, or manager of any massage establishment to permit any person who does not have the permit and certification required by this section to administer any massage in such establishment.

(1998 Code, § 14-221) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.46 APPLICATION.

(A) Each application for a massage therapist permit shall be upon a form provided by the Director and shall be submitted to the Director.

(B) Each such application shall contain the following information:

(1) The applicant's full name, residential address, and 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 the establishment;

(3) The names and addresses of any and all previous massage establishments where the applicant has been employed as a massage therapist;

(4) The criminal record, if any, other than a misdemeanor traffic violation or traffic infraction, of the applicant;

(5) Whether any permit to perform as a massage therapist has previously been denied or the application 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 Town Sergeant or his or her agent; and

(7) Written proof that the applicant is 18 years of age or older.

(1998 Code, § 14-222) (Ord. passed 6-23-1997)

§ 112.47 APPLICANT'S QUALIFICATIONS GENERALLY.

Each applicant for a massage therapist's permit must be at least 18 years of age and must be certified as a massage therapist by the Board of Nursing of the state.

(1998 Code, § 14-223) (Ord. passed 6-23-1997)

§ 112.48 APPLICANT'S HEALTH CERTIFICATE.

Each applicant for a permit under this subchapter must obtain from the Director a health certificate within the 12 months preceding the application for a massage therapist's permit. Such certificate shall be issued upon such conditions as the Director may deem reasonable and proper to accomplish the purposes of this subchapter and to protect the health of patrons and other persons in massage establishments.

(1998 Code, § 14-224) (Ord. passed 6-23-1997)

§ 112.49 INVESTIGATION OF APPLICANT'S CRIMINAL RECORD.

Upon receipt of an application for a permit under this subchapter, the Director shall request that the Town Sergeant make or cause to be made a thorough investigation of the criminal record of the applicant.

(1998 Code, § 14-225) (Ord. passed 6-23-1997)

§ 112.50 FEE.

The annual fee for a massage therapist's permit shall be \$15, which fee shall be paid prior to the issuance or renewal of the permit. Such fee shall be in addition to any business or occupation license tax imposed by the town and any other fees that may be required to engage in the business.

(1998 Code, § 14-226) (Ord. passed 6-23-1997)

§ 112.51 ISSUANCE OR DENIAL.

(A) A massage therapist's permit shall be issued by the Director if the applicant has paid the fee and meets the qualifications prescribed by this subchapter; however, the Director shall deny any application for a massage therapist's permit, after notice and hearing, if the Director finds that any condition exists that would constitute grounds for revocation of such a permit under § 112.04.

(B) The Director shall act upon the application for a massage therapist's permit within 60 days from the date of the application. Notice of the hearing before the Director for denial of the application shall be given in writing, setting forth the grounds for the denial and the time and place of the hearing. Such notice shall be mailed, by certified mail, to the applicant's last known address, at least ten days prior to the date set for such hearing.

(1998 Code, § 14-227) (Ord. passed 6-23-1997)

§ 112.52 NONTRANSFERABLE.

No massage therapist's permit shall be transferable from one person to another.

(1998 Code, § 14-228) (Ord. passed 6-23-1997)

§ 112.53 DISPLAY.

Every person to whom a massage therapist's permit has been granted shall, while in a massage establishment, display such permit in a conspicuous place in the massage establishment.

(1998 Code, § 14-229) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.54 TERM.

A massage therapist's permit shall be valid for one year from the date of issuance unless sooner suspended or revoked. Within one month before the expiration date, the holder of a massage therapist's

permit may make application for a new permit as provided in this section; however, applicants whose fingerprints are currently on file with the Director shall not be required to provide fingerprints when applying for a new permit.

(1998 Code, § 14-230) (Ord. passed 6-23-1997)

§ 112.99 PENALTY.

Any person violating any provision of this chapter shall be guilty of a class 1 misdemeanor.
(1998 Code, § 14-158) (Ord. passed 6-23-1997)