

MEMORANDUM

March 13, 2015

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 9-15, Health and Sanitation – Bodywork Establishment - License

Bill 9-15, Health and Sanitation – Bodywork Establishment - License, sponsored by the Council President at the request of the County Executive and Councilmembers Huckler, Katz, and Rice, was introduced on March 3. A joint Health and Human Services/Public Safety Committee worksession is tentatively scheduled for March 26 at 9:30 a.m.

Bill 9-15 would define bodywork as the practice of using one's hands to apply pressure on an individual's fully clothed body or bare feet to affect the electromagnetic energy, energetic field, or energy meridians of the human body. Bodywork includes the practice of reflexology or acupressure. The Bill would require a license to operate a bodywork establishment in the County. The Department of Health and Human Services would issue the license to operate a bodywork establishment and the Police Department would be authorized to enforce the law.

Background

Many establishments have emerged in the County as fronts for human trafficking while advertising themselves as performing reflexology, acupressure, or other similar practices that do not fit the State definition of massage. The intent of Bill 9-15 is to permit legitimate establishments that practice bodywork to continue while preventing illegal human trafficking operations from operating in the County under the pretext of practicing bodywork. The Executive explained the purpose of the Bill in his transmittal memorandum at ©13 and in the Legislative Request Report at ©11-12.

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Bill No. 9-15
Concerning: Health and Sanitation –
Bodywork Establishment - License
Revised: March 11, 2015 Draft No. 4
Introduced: March 3, 2015
Expires: September 3, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive and Councilmembers Hucker, Katz,
and Rice

AN ACT to:

- (1) require a license to operate a bodywork establishment in the County;
- (2) define bodywork;
- (3) authorize the Department of Health and Human Services to issue a license to operate a bodywork establishment;
- (4) authorize the Police Department to enforce the law; and
- (5) generally regulate the operation of a bodywork establishment in the County.

By adding

Montgomery County Code
Chapter 24, Health and Sanitation
Section 24-11B

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 24-11B is added as follows:**

2 **24-11B. Bodywork Establishments.**

3 (a) Definitions. As used in this Section, the following words and phrases
4 have the following meanings:

5 Bodywork means the practice of using one's hands to apply pressure on
6 an individual's fully clothed body or bare feet to affect the
7 electromagnetic energy, energetic field, or energy meridians of the
8 human body. Bodywork includes the practice of reflexology or
9 acupressure.

10 Bodywork establishment means any business that advertises bodywork
11 services or where any employee, agent, or contractor performs bodywork
12 on an individual.

13 Chief means the Chief of Police or the Chief's designee.

14 Director means the Director of the Department of Health and Human
15 Services or the Director's designee.

16 Licensee means an individual owner of a bodywork establishment or an
17 individual designated by the owner if the owner is not an individual.

18 Sexual activity means any direct or indirect physical contact between
19 persons intended to erotically stimulate either person or both persons or
20 is likely to cause such stimulation. Sexual activity includes sexual
21 intercourse, fellatio, cunnilingus, anal intercourse, masturbation, or
22 manual stimulation.

23 (b) Scope. This Section does not apply to:

24 (1) an individual with a license, registration, or other approval issued
25 by the Board to provide massage under § 3-5A-05 of the Health
26 Occupations Article;

27 (2) an athletic trainer who:

28 (A) is certified by a nationally recognized athletic trainer
 29 certification agency identified by the Director and works
 30 under the supervision of a physician, while functioning in
 31 the athletic trainer's professional capacity;

32 (B) is employed by an accredited educational institution, while
 33 performing professional duties at that institution; or

34 (C) is employed by a professional sports team, while treating
 35 members of that team; or

36 (3) a business in which every person who provides services is a
 37 certified massage therapist or registered massage practitioner
 38 under State law.

39 (c) *Bodywork establishment.*

40 (1) *License required.* A bodywork establishment must have a license
 41 issued by the Director under this Section. The licensee must be the
 42 owner of the establishment. If the owner is not an individual, the
 43 owner must designate on the application an individual as the
 44 owner's representative. The owner's representative must consent
 45 on the application to be so designated. The representative must
 46 accept any notice sent to the owner under this Section. If the owner
 47 does not pay any fine, penalty, or fee due under this Section, the
 48 Director may collect the fine, penalty, or fee from the owner's
 49 representative.

50 (2) Except as otherwise provided in this Section, the Director must,
 51 with the assistance of the Police Department, review each
 52 application and issue a bodywork establishment license if:

- 53 (A) the applicant meets the requirements of this Section and
54 completes a license application on a form provided by the
55 Director;
- 56 (B) the bodywork establishment facility meets the minimum
57 standards set by Executive Regulation;
- 58 (C) the applicant pays an application fee and license fee; and
- 59 (D) the establishment complies with all applicable zoning,
60 health, fire prevention, and building laws and regulations.
- 61 (3) The Director must conduct a pre-licensing inspection of any
62 bodywork establishment, and may conduct other inspections
63 necessary to enforce this Section.
- 64 (4) A bodywork establishment must continue to meet the minimum
65 standards set by regulation at all times.
- 66 (5) Any person who operates a bodywork establishment must permit
67 a County police officer or the Director to enter the bodywork
68 establishment at any time during operating hours, and at any other
69 time in an emergency or when the establishment is occupied.
- 70 (6) Any person who operates a bodywork establishment must not
71 allow a person to perform any sexual activity with another person
72 in the establishment.
- 73 (7) A bodywork establishment license has a term of one year and must
74 be renewed annually.
- 75 (8) A bodywork establishment license;
- 76 (A) must not be transferred from one person to another;
- 77 (B) must not be transferred from one location to another
78 location until a license is issued for the new location; and
- 79 (C) applies to a single location specified in the license.

80 (9) If an applicant for a bodywork establishment license does not own
81 the building where the establishment would be located, the
82 building owner must approve the use of the building as a bodywork
83 establishment on a form provided by the Director.

84 (d) Bodywork establishment licensee.

85 (1) The licensee, if an individual, or an owner's representative
86 designated under subsection (c)(1)(A), must

87 (A) submit proof of good health required by the Director;

88 (B) be at least 18 years old;

89 (C) have not been convicted of, pled guilty or nolo contendere
90 to, or served any term of probation as a result of being
91 charged with a:

92 (i) felony;

93 (ii) crime involving moral turpitude, including
94 solicitation, prostitution, and related crimes;

95 (iii) violation of a controlled dangerous substances law;
96 or

97 (iv) violation of any law regulating the practice of a health
98 occupation;

99 (D) not permit an individual to perform bodywork services in
100 the establishment while under the influence of a non-
101 prescribed drug or alcoholic beverage;

102 (E) provide a passport-size photograph, fingerprints, and a list
103 of the individual's occupation or employment for the 3 years
104 before filing the application; and

105 (F) if the applicant is not a United States citizen, provide
 106 evidence of legal presence and employability in the United
 107 States.

108 (e) Executive Regulations. The Executive must adopt an Executive
 109 Regulation under Method (2) establishing the minimum standards for a
 110 bodywork establishment and the application process. The Executive
 111 must set application and license fees by Executive Regulation under
 112 Method (3) that substantially cover the cost of administering this Section.

113 (f) Denial or Revocation of license. The Director may refuse to issue a
 114 license under this Section, and may suspend or revoke a license issued
 115 under this Section, after a hearing for which reasonable notice has been
 116 given, if the licensee or applicant:

117 (1) violates any provision of this Section;

118 (2) submits fraudulent information in support of a license application
 119 under this Section;

120 (3) is convicted of, or pleads guilty or nolo contendere to, or is ordered
 121 to serve a period of probation after being charged with:

122 (A) a felony;

123 (B) a crime involving moral turpitude, including solicitation,
 124 prostitution, and related crimes;

125 (C) violation of a controlled dangerous substance law; or

126 (D) violation of any law regulating the practice of a health
 127 occupation;

128 (4) permits an individual to perform bodywork services in the
 129 establishment while under the influence of a non-prescribed drug
 130 or alcoholic beverage; or

131 (5) is grossly negligent in the performance of bodywork.

132 (g) Notice and opportunity for hearing.

133 (1) Notice. After finding that one or more grounds for denial,
134 suspension, or revocation of a license could exist, the Director may
135 serve a written notice on the licensee or applicant in person or by
136 regular mail, postage prepaid, addressed to the person's last known
137 address as maintained in the Director's file. Service on that person
138 by mail is effective 3 days after mailing. The Director must also
139 post a written notice at a conspicuous place on the establishment
140 for which the license was or would be issued. The written notice
141 must, at a minimum:

142 (A) state that the Director has found that the licensee or
143 applicant may be subject to denial, suspension, or
144 revocation;

145 (B) identify the specific grounds for the Director's findings; and

146 (C) set a date for a hearing on denial of the application or
147 suspension or revocation of the license. The hearing must
148 be held at least 5 days after service of the Director's notice,
149 unless the parties agree to an earlier date.

150 (2) Hearing. The Director or a designee may conduct the hearing. At
151 the hearing, the licensee or applicant may present evidence and
152 witnesses to refute the grounds cited by the Director for denying
153 the application or suspending or revoking the license, and the
154 County and any other person may submit relevant evidence. The
155 relevant records of the Department are part of the hearing record.
156 Within 3 days after the hearing closes, the person conducting the
157 hearing must render a decision in writing, giving the reasons for
158 the decision. That decision is final, subject to judicial review under

159 the Maryland Rules for review of administrative decisions in the
160 Circuit Court and the Court of Special Appeals.

161 (3) Failure to appear. A licensee or applicant who after notice does
162 not appear at a hearing waives the right to a hearing and consents
163 to the action that the Director proposed in the notice. The Director
164 may deny the application or suspend or revoke the license as
165 proposed in the notice.

166 (4) Notice and Effective Date of Suspension or Revocation. The
167 Director's written decision must be posted at the office of the
168 Director and must be served on the licensee or applicant in person
169 or by regular mail, postage prepaid, addressed to the applicant or
170 licensee's last known address as maintained in the Department's
171 files. The Director must also post a written notice of the decision
172 at a conspicuous place on the establishment for which the license
173 was or would be issued. A suspension or revocation takes effect
174 on the day the Director's decision is delivered in person or posted,
175 whichever occurs first. To facilitate enforcement of this provision,
176 the Director may require the applicant or licensee to appear at the
177 Director's office at a specific time to receive a copy of the decision
178 and be prepared to surrender the license. If a licensee or applicant
179 does not appear to receive the Director's decision, the Director's
180 decision is effective on the date and time the licensee or applicant
181 was directed to appear.

182 (5) Surrender of license and security. When a license is suspended or
183 revoked, the Director must take custody of the suspended or
184 revoked license.

185 (h) Upon receipt of notice of a license revocation or suspension, unless
 186 otherwise directed, the licensee must, within 24 hours:

187 (1) place the license in the mail, postage prepaid, addressed to the
 188 Department; or

189 (2) physically deliver the license to the Department.

190 (i) If the Department does not receive a suspended or revoked license within
 191 48 hours after notification, excluding weekends or a legal holiday, or as
 192 otherwise directed, the holder of the license violates this Section. In
 193 addition to any other penalties that may be imposed, the Director or the
 194 Chief may:

195 (1) remove the revoked or suspended license from the business
 196 location; and

197 (2) close the place of business until the person operating the business
 198 obtains a license.

199 (j) Appeals.

200 (1) Any person aggrieved by the denial, suspension, or revocation of
 201 any license under this Section may seek judicial review under the
 202 Maryland Rules for review of administrative decisions in the
 203 Circuit Court and the Court of Special Appeals.

204 (2) Except as provided in subsection (3), the Director's decision to
 205 deny a license must not be stayed pending appeal.

206 (3) Final administrative action that revokes or suspends a license may
 207 be stayed pending appeal only if:

208 (A) the Court finds that the public health, safety, or welfare will
 209 not be endangered during the appeal; and

210 (B) an appropriate bond is posted.

211 (k) Penalty. A person has committed a class A violation if the person:

LEGISLATIVE REQUEST REPORT

Bill 9-15

Health and Sanitation- Bodywork Establishment- License

I. **Description:** Bill 9-15 would require a license to operate a bodywork establishment in the County. "Bodywork" includes acupuncture, reflexology, and other practices that fall outside the State definition of massage. The licenses will be issued by the Department of Health and Human Services and enforced by both DHHS and the Police Department. The law also provides general requirements for operators of a bodyworks establishment in the County and authorizes the Director of the Department of Health and Human Services to develop further regulations governing the minimum standards for these establishments to ensure the health and safety of patrons.

II. **Problem:** The Montgomery County Police Department has expressed concern about the prevalence of human trafficking and prostitution in Montgomery County. The Human Trafficking Task Force was established to address this concern. According to MCPD, Montgomery County is an attractive location for human traffickers because of its relatively high per capita income. A trafficker, usually originating from another state, will typically operate by establishing a seemingly legitimate business in Montgomery County and using it as a venue for prostitution. These "legitimate businesses" are most often massage parlors. Employees of the parlors rarely possess a massage license, as required by the State and County.

When MCPD stepped up enforcement and prosecution of the establishments for unlicensed practice of massage, they ran into several problems, two of which are addressed by the legislation. First, traffickers quickly learned that they could evade licensing requirements by holding themselves out as "reflexologists" or "acupressurists"-- practices that fall outside the state definition of "massage" for licensing purposes. Second, successful prosecution of an unlicensed massage charge, either criminally or civilly, did little prevent the continued operation of these facilities because the penalties are minimal in light of the effort involved in prosecution and the amount of money to be made in prostitution. Nothing in current law prevented traffickers from opening up a new massage or reflexology parlor in the county, even after prosecution for unlicensed massage. As a result, MCPD found itself dealing with a constant stream of reoffenders, straining enforcement resources, and neither the Department of Health and Human Services, which licenses massage parlors in the County, nor the Department of Permitting Services, which issues Use & Occupancy Permits, had sufficient authority to assist.

III. **Goals and Objectives:** The Human Trafficking Task Force is recommending this Bill in order to address gaps in the current law, making Montgomery County a less attractive location for human traffickers and improving collaboration and enforcement ability

between the Department of Health and Human Services, the Department of Permitting Services, and the Police Department.

The Task Force is also recommending a companion Zoning Text Amendment, changes to the existing Executive Regulations related to licensure of massage parlors, and new Executive Regulations as required by this Bill, if passed.

- IV. **Coordination:** Montgomery County Police Department
Department of Health and Human Services
Department of Permitting Services
Office of the County Attorney
- V. **Fiscal Impact:** To be provided
- VI. **Economic Impact:** To be provided.
- VII. **Evaluation of the Results of the Proposed Law:** Subject to the general oversight of the County Executive and County Council.
- VIII. **Experience Elsewhere:** According to MCPD, other municipalities around the country have successfully reduced human trafficking in their jurisdictions by strengthening local regulation of massage as well as acupressure, reflexology, and related services.
- IX. **Sources of Information:** Sgt. Kenneth Penrod, MCPD, Vice and Intelligence Unit
Russell Hamill, MCPD, Assistant Chief
Ehsan Motazedi, Department of Permitting Services
Hadi Mansouri, Department of Permitting Services
Clark Beil, Department of Health and Human Services
Kristen Kalaria, Office of the County Attorney
Jim Savage, Office of the County Attorney
- X. **Application within Municipalities:** This Bill amends Chapter 24, which applies in the following municipalities: Barnesville, Brookville, Chevy Chase Village, Chevy Chase View, Chevy Chase Sec. 3, Town of Chevy Chase, Chevy Chase Sec. 5, Town of Garrett Park, Town of Glen Echo, Village of Martin's Addition, Village of North Chevy Chase, City of Takoma Park, and Town of Washington Grove.
- XI. **Penalties:** Class A Violation, subject to fines and penalties as defined by Section 1-19 of the County Code.



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

February 3, 2015

Isiah Leggett
County Executive

TO: George Leventhal, President
County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Bodywork Establishment – License

I am writing to request that you introduce the attached bill and Zoning Text Amendment (ZTA) that would impose regulations on “bodyworks” establishments, which have become a common venue for human trafficking in Montgomery County.

Maryland’s central location and Montgomery County’s proximity to airports and Interstate-95 has facilitated its development as both a pass-through state and a destination for human traffickers. Traffickers utilize our highways and airports to connect victims to major east coast locations such as Montgomery County, Baltimore, and Washington, D.C. The victims in human trafficking are typically young women who are forced into lives they didn’t choose and have no way of escaping. By passing this bill, you will give our Police Department an effective and much needed tool to make inroads against this crime.

The proposed bill will require a license to operate a bodywork establishment in the County. “Bodyworks” establishments are businesses that advertise bodywork services, such as reflexology, acupressure and other practices that fall outside the State definition of massage, or where any employee, agent or contractor performs bodywork on an individual. Many bodyworks establishments have emerged as fronts for human trafficking after the State began regulating massage parlors. This bill will ensure that legal establishments can operate while providing enforcement against illegal establishments. The “bodyworks” licenses will be issued by the County’s Department of Health and Human Services (DHHS), and enforced by both DHHS and the Police Department.

The nature of human trafficking keeps changing. We must adapt our laws to keep up and to empower our law enforcement agencies with the tools they need to protect the innocent lives of those forced into prostitution and to punish those who would destroy the lives of these victims. Your assistance is appreciated.

IL/kk

Attachments