

Resolution No.: 18-347
Introduced: December 8, 2015
Adopted: December 8, 2015

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: County Council

SUBJECT: Approval of Executive Regulation 14-15, *Bodyworks*, Department of Health and Human Services

Background

1. On October 21, 2015, the County Council received proposed Executive Regulation 14-15, *Bodyworks*, Department of Health and Human Services.
2. The Council must review the regulation under Method (2) of Section 2A-15 of the Code.
3. Under Method (2), if the Council does not approve or disapprove a regulation within 60 calendar days after the Council receives the regulation, the regulation automatically takes effect. The Council extended the time for consideration.

Action

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

Executive Regulation 14-15, *Bodyworks*, Department of Health and Human Services, is approved.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Bodyworks	Number 14-15
Originating Department Department of Health and Human Services	Effective Date December 8, 2015

Montgomery County Regulation On:

BODYWORKS

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Issued by: County Executive
Regulation No. 14-15
COMCOR No. 24.11.03

Authority: Montgomery County Code (2014) Section 24-1
Supersedes: none
Council Review: Method (2) under Code Section 2A-15
Register Vol. 32 No. 7

Effective Date: December 8, 2015
Comment Deadline: July 30, 2015

SUMMARY: This regulation is established to address the problem of unlicensed acupressure, reflexology, and other "bodyworks" in Montgomery County, in accordance with Code Section 24-11.B

STAFF CONTACT: Clark Beil, Telephone 240-777-3831

ADDRESS: Department of Health and Human Services
Licensure and Regulatory Services
255 Rockville Pike, Suite 100
Rockville, Md. 20850

BACKGROUND INFORMATION: This regulation is part of a package of legislation recommended by the Human Trafficking Task Force in order to address the problem of human trafficking operations circumventing the state and local massage regulations by claiming to engage only in acupressure, reflexology, or other unregulated "bodyworks" in Montgomery County. These amendments, coupled with companion legislation and regulations to address gaps in the existing enforcement regime for illegal massage establishments, will improve the County's ability to detect and eliminate criminal activity with minimal burden on legitimate business activity. The Department of Permitting Services and the Montgomery County Police Department participated in the development of this regulation.



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24.11.03.01 Definitions

In these regulations, terms defined in Section 24-11B of the County Code are applicable and not redefined. The following words and phrases have the following meanings:

Applicant- A person applying for a license to operate a bodyworks establishment.

Department- The Montgomery County Department of Health and Human Services.

License- A license to operate a bodyworks establishment.

24.11.03.02 Scope

A bodyworks license is not required for the operation of a business in which every person who provides services is licensed by the Maryland Board of Acupuncture or is otherwise exempted by Section 24-11B(b) of the Code.

24.11.03.03 License for Operation of a Bodyworks Establishment

A. APPLICATION FOR A LICENSE TO OPERATE A BODYWORKS ESTABLISHMENT

A person may obtain a license to operate a bodyworks establishment by applying to the Director on a form provided by the Director that, at a minimum, requires the applicant to provide:

1. The applicant's name, current address, the location and mailing address of the proposed establishment, and any address where the applicant has lived or operated a business for the past five years;
2. The applicant's employment history for the previous three years preceding the date of the application;
3. A copy of any professional license or certification related to bodyworks held by the applicant, if applicable;
4. A list of all employees who will provide bodyworks services;



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5. A passport-style photograph taken within the past 24 months;
6. The applicant's fingerprints;
7. A statement that the applicant is in good health and free of communicable diseases;
8. If the applicant is not a United States citizen, evidence of legal presence and employability in the United States;
9. A statement regarding whether the applicant has ever been convicted of, pled nolo contendere to, or received probation before judgment of a crime other than a traffic offense for which imprisonment was not a possible punishment; the nature of the crime; a description of the disposition of the matter; and the name and address of any parole or probation officer, or agency that may have knowledge of the offense or the proper completion of any sentence, probation or parole;
10. A statement regarding whether the applicant has ever received a civil citation for practicing massage or bodyworks without a license;
11. A statement regarding whether the applicant has ever had a license to practice massage or bodyworks revoked by the State of Maryland or any other jurisdiction;
12. A written description of the services to be provided by the establishment;
13. All necessary signatures and approvals to authorize a complete criminal background check;
14. If the applicant is an association or a partnership, the names and resident addresses of each of the associates or partners. If the applicant is a corporation, the names and resident addresses of each of the officers and directors of the 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 and owns at least 33% of the stock of the applicant corporation, the names and resident addresses of each of the officers and directors of the corporation and of each stockholder owning more than 10% of the stock of the corporation. If the bodyworks establishment is to be managed by someone other than the applicant, the name and resident address of each manager. Each person who must be identified on the application under this paragraph is considered an applicant under these regulations.
15. The applicant's signature, either notarized or witnessed by a representative of the Department.

B. CHANGE OF INFORMATION CONTAINED IN LICENSE APPLICATION



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Each person to whom the Director has issued a license must report to the Director any change in any of the information required to be provided in a bodyworks or massage establishment or manager application under 24.11.01.02.A. The licensee must make a written report of any change and deliver the report to the Director no more than 72 hours after learning of the change. Failure to deliver a report of a change to the Director within 72 hours of learning of it is grounds for denial or revocation of the license.

C. EXEMPTION

The following categories of individuals and establishments are exempt from the licensing requirements under these regulations, except as specified in C.3.b. of this regulation, but upon request of any police officer or county code enforcement official must produce certification from the State Board or other certifying board as proof that the person(s) has certification or registration in good standing:

1. a person with a license, registration, or other approval issued by the Maryland State Board of Chiropractic and Massage Therapy Examiners to provide massage under § 3-5A-05 of the Health Occupations Article;
2. a person with a license, registration, or other approval issued by the Maryland State Board of Acupuncture to provide acupuncture under § 1A-301 of the Health Occupations Article;
3. an athletic trainer who meets the following criteria and applies for the appropriate application for an exemption:
 - a. is currently certified by the National Athletic Trainers' Association Board of Certification (NATABOC) or a comparable organization that is certified by the National Commission of Certifying Agencies and works under the supervision of a physician; or
 - b. is affiliated with an accredited educational institution while performing professional duties at that institution; or
 - c. is employed by a professional athletic organization, while treating members of



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that organization; or

4. an establishment where only certified massage therapists, registered massage practitioners, licensed acupuncturists, or others approved by the Board of Chiropractic and Massage Therapy Examiners or the Board of Acupuncture perform bodyworks. Any establishment seeking an exemption on this basis must:
 - a. provide an annual business plan to include:
 - (i) name and address of business;
 - (ii) type of business and services provided;
 - (iii) days and hours of operation;
 - (iv) a list of employees currently licensed by the Board of Chiropractic and Massage Therapy Examiners or Board of Acupuncture who perform bodyworks on the premises; and
 - (v) a statement that all employees providing massage therapy to customers will possess a valid license from the Board of Chiropractic and Massage Therapy Examiners or Board of Acupuncture
 - b. Submit an application for Use and Occupancy to the Director of Permitting Services or other jurisdiction authority for any new establishment.

24.11.03.04 Requirements for Bodyworks Establishments

A. RESPONSIBILITY

The licensee of a bodyworks establishment must ensure that the requirements of this section are carried out. Failure to do so is a violation of this section. Where the licensee delegates duties to a manager, the manager must ensure that the requirements of this section are carried out. Failure to do so is a violation of this section.



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B. MINIMUM STANDARDS FOR BODYWORKS ESTABLISHMENT FACILITIES

Each person who operates a bodyworks establishment in the County that is required to hold a license under Section 24-11B of the County Code must:

1. Locate the bodyworks establishment in a proper zoning district as specified in Chapter 59 of the County Code;
2. Provide a copy of the application for a Use and Occupancy Permit for the premises;
3. If the applicant does not own the premises, a statement from the property's owner indicating that the owner is in agreement with the applicant's plan to operate a bodyworks establishment on the premises;
4. Ensure that the building in which the bodyworks establishment is located complies with all federal, State, and local laws and regulations;
5. Ensure that at least one hand basin is immediately available in each area where bodyworks services are administered;
6. Ensure that all walls, ceilings, floors, pools, showers, bathtubs, steam rooms, hand basins, baths, spas, and other physical facilities located at the bodyworks establishment are in good repair and maintained in a clean and sanitary condition;
7. Provide clean, laundered, and sanitary towels for each patron of the bodyworks establishment;
8. Ensure that all staff providing bodyworks services at the establishment cleanse his or her hands thoroughly with soap and hot running water immediately before providing bodyworks services to each client;
9. Maintain a registry at the bodyworks establishment and record in the registry the name, residence address, a description and the date of all services provided to each customer of the establishment, and the name of the employee who provided the services;
10. Require each customer of the bodyworks establishment to provide positive identification and to sign the registry;
11. Keep the records entered in the registry of the bodyworks establishment for at least 3 years after the date of service;
12. Ensure that all clients remain fully clothed while receiving bodyworks services, except for removal of socks and shoes;



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13. Ensure that bodyworks services do not include the application of oils, except on hands or feet;
14. Ensure that employees are fully clothed while administering bodyworks services;
15. Ensure that no illegal activity is conducted at the bodyworks establishment and that no person employed by the establishment has been convicted of a crime other than traffic offenses for which a sentence of incarceration could not have been imposed within 5 years immediately preceding the date of the application;
16. Ensure that the business operates between no earlier than 8:00 a.m. and no later than 9:00 p.m.
17. Ensure that the following items are clearly posted so that they are visible to all who enter the premises:
 - a. A copy of the license, which shall include a photo of the licensee;
 - b. A photograph of each employee alongside a description of the services the employee is authorized to provide;
 - c. A legible sign, at least 9" by 11" in size, with the words "this bodyworks establishment is subject to police inspection" printed in letters no less than 3/4 inch in height on a background that is a contrasting color;
 - d. A legible sign stating that there can be no removal of clothes or application of oils except on hands and feet.

C. INSPECTIONS

A person who operates a bodyworks establishment must permit the Director or the Montgomery County Police Department to enter the bodyworks establishment to conduct an inspection prior to licensing. After licensing, inspections may be conducted without prior notice.



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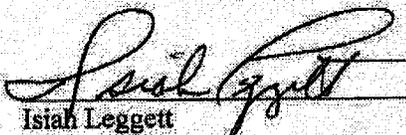
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Originating Department
Department of Health and Human Services

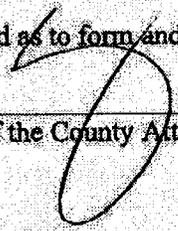
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At the Director's request, a person operating a massage establishment must:

1. Produce all business and employment records, including customer registries, licenses, and registrations that are required by Section 24-11B of the County Code or this Section;
2. Give the inspector access to enter and inspect the entire bodyworks establishment; and
3. Permit the inspector to interview all employees, customers, and agents of the person who is licensed to operate the bodyworks establishment.


 Isiah Leggett
 County Executive

Approved as to form and legality:


 Office of the County Attorney/Date

8/18/15