



Montgomery County Code – Chapter 24 Bodywork Establishments

24-11B.

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

Bodywork means the practice of using one's hands or another part of the body 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.

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

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

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

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

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

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

(1) an individual 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) an athletic trainer who:

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

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

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

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

(c) *Bodywork establishment.*

(1) *License required.* A bodywork establishment must have a license issued by the Director under this Section. The licensee must be the owner of the establishment. If the owner is not an individual, the owner must designate on the application an individual as the owner's representative. The owner's representative must consent on the application to be so designated. The representative must accept any notice sent to the owner under this Section. If the owner does

not pay any fine, penalty, or fee due under this Section, the Director may collect the fine, penalty, or fee from the owner's representative.

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

(A) the applicant meets the requirements of this Section and completes a license application on a form provided by the Director;

(B) the bodywork establishment facility meets the minimum standards set by Executive Regulation;

(C) the applicant pays an application fee and license fee; and

(D) the establishment complies with all applicable zoning, health, fire prevention, and building laws and regulations.

(3) The Director must conduct a pre-licensing inspection of any bodywork establishment, and may conduct other inspections necessary to enforce this Section.

(4) A bodywork establishment must continue to meet the minimum standards set by regulation at all times.

(5) Any person who operates a bodywork establishment must permit a County police officer or the Director to enter the bodywork establishment at any time during operating hours, and at any other time in an emergency or when the establishment is occupied.

(6) Any person who operates a bodywork establishment must not allow a person to perform any sexual activity with another person in the establishment.

(7) A bodywork establishment license has a term of one year and must be renewed annually.

(8) A bodywork establishment license;

(A) must not be transferred from one person to another;

(B) must not be transferred from one location to another location until a license is issued for the new location; and

(C) applies to a single location specified in the license.

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

(d) *Bodywork establishment licensee.*

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

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

(B) be at least 18 years old;

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

(i) felony;

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

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

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

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

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

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

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

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

- (1) violates any provision of this Section;
- (2) submits fraudulent information in support of a license application under this Section;
- (3) is convicted of, or pleads guilty or nolo contendere to, or is ordered to serve a period of probation after being charged with:
 - (A) a felony;
 - (B) a crime involving moral turpitude, including solicitation, prostitution, and related crimes;
 - (C) violation of a controlled dangerous substance law; or
 - (D) violation of any law regulating the practice of a health occupation;
- (4) permits an individual to perform bodywork services in the establishment while under the influence of a non-prescribed drug or alcoholic beverage; or
- (5) is grossly negligent in the performance of bodywork.

(g) *Notice and opportunity for hearing.*

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

- (A) state that the Director has found that the licensee or applicant may be subject to denial, suspension, or revocation;
- (B) identify the specific grounds for the Director's findings; and
- (C) set a date for a hearing on denial of the application or suspension or revocation of the license. The hearing must be held at least 5 days after service of the Director's notice, unless the parties agree to an earlier date.

(2) *Hearing.* The Director or a designee may conduct the hearing. At the hearing, the licensee or applicant may present evidence and witnesses to refute the grounds cited by the Director for denying the application or suspending or revoking the license, and the County and any other person may submit relevant evidence. The relevant records of the Department are part of the hearing record. Within 3 days after the hearing closes, the person conducting the hearing must render a decision in writing, giving the reasons for the decision. That decision is final, subject to judicial review under the Maryland Rules for review of administrative decisions in the Circuit Court and the Court of Special Appeals.

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

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

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

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

- (1) place the license in the mail, postage prepaid, addressed to the Department; or
- (2) physically deliver the license to the Department.

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

- (1) remove the revoked or suspended license from the business location; and
- (2) close the place of business until the person operating the business obtains a license.

(j) Appeals.

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

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

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

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

(B) an appropriate bond is posted.

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

- (1) violates any provision of this Section; or
- (2) submits fraudulent information in support of a license application under this Section.

(2015 L.M.C., ch. 22, § 1.)