



Montgomery
County Council

Committee HHS/PS

Staff: Jeffrey L. Zyontz, Senior Legislative Analyst

Purpose: To receive testimony – no vote expected

Keywords: #BodyworkLicensing

AGENDA ITEM #7 & 8

February 4, 2020

Public Hearing

SUBJECT

Bill 1-20, Bodywork Establishments – Licensing – Amendments

Resolution to adopt Bill 1-20, Health and Sanitation – Bodywork Establishments – Licensing – Amendments as a Board of Health Regulation

Lead Sponsors: Councilmember Rice and Council Vice President Hucker

EXPECTED ATTENDEES

Paula Jilanis, Chair - Maryland State Board of Massage Therapist Examiners

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Public Hearing – no vote expected

DESCRIPTION/ISSUE

A bodywork license is easy to get and does not require any training for employees. Any violation found can result only in the license applicant for the establishment changing.

Bill 1-20 would delete the provisions concerning massage establishments and expand the scope of bodywork establishments to include massage establishments. There are no County licensed massage establishments, and this would clean-up code provisions without reducing the activities of County concern. To be a licensed Bodywork establishment, Bill 1-20 would require every individual performing bodywork services to be a certified massage therapist or registered massage practitioner. Bill 1-20 would also amend the County Code concerning Building permits to require compliance with all County licensing requirements as a condition of building permits and allow the revocation of use and occupancy permits for zoning and licensing violations.

SUMMARY OF KEY DISCUSSION POINTS

- None

This report contains:

Staff Report

Bill 1-20

Legislative Request Report

Board of Health Regulation

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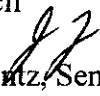
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MEMORANDUM

January 30, 2020

TO: County Council

FROM: Jeffrey L. Zyontz  Senior Legislative Analyst

SUBJECT: Bill 1-20, Health and Sanitation – Bodywork Establishments – Licensing – Amendments
Resolution to adopt Bill 1-20, Health and Sanitation – Bodywork Establishments – Licensing – Amendments as a Board of Health Regulation.

PURPOSE: Public Hearing – no Council votes required

Bill 1-20, Health and Sanitation – Bodywork Establishments – Licensing - Amendments, sponsored by Lead Sponsors Councilmember Rice and Council Vice President Hucker, and Co-Sponsors, Council President Katz and Councilmembers Navarro, Albornoz and Riemer, was introduced on January 14, 2020¹. A joint Health and Human Services and Public Safety Committee worksession is tentatively scheduled for February 25, 2018 at 1:30 p.m. A companion Board of Health regulation is also scheduled for a public hearing.

Bill 1-20 would:

- (1) amend code provisions concerning massage establishments;
- (2) expand the scope of bodywork establishments to include massage establishments;
- (3) require every individual performing bodywork services to be a certified massage therapist or registered massage practitioner;
- (4) require compliance with all County licensing requirements as a condition of building permits; and
- (5) allow the revocation of use and occupancy permits for zoning and licensing violations.

This packet contains:

	<u>Circle #</u>
Bill 1-20	1
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Board of Health Regulation	24

Bill No. 1-20
Concerning: Health and Sanitation –
Bodywork Establishments – Licensing
- Amendments
Revised: 1-30-2020 Draft No. 11
Introduced: January 14, 2020
Expires: July 14, 2021
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Rice and Council Vice President Hucker
Co-Sponsors: Council President Katz and Councilmembers Navarro, Alborno, and Riener

AN ACT to:

- (1) amend code provisions concerning massage establishments;
- (2) expand the scope of bodywork establishments to include massage establishments;
- (3) require every individual performing bodywork services to be a certified massage therapist or registered massage practitioner;
- (4) require compliance with all County licensing requirements as a condition of building permits;
- (5) allow the revocation of use and occupancy permits for zoning and licensing violations; and
- (6) generally amend the provisions for bodywork establishments.

By amending

Montgomery County Code
Chapter 8, Buildings
Sections 8-26 and 8-28

Montgomery County Code
Chapter 24, Health and Sanitation
Sections 24-8 and 24-8B

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:

Sec. 1. Sections 8-26, 8-28, 24-8, and 24-8B, are amended as follows:

8-26. Conditions of permit.

* * *

(g) *Compliance with zoning and business licensing regulations.*

(1) The building or structure must comply with all applicable zoning regulations, including all conditions and development standards attached to a site plan approved under Chapter 59. The issuance of a permit by the Department for the building or structure does not affect an otherwise applicable zoning regulation.

(2) The occupants of any building must comply with all County licensing requirements.

* * *

8-28. Certificate of use and occupancy.

* * *

(j) Revocation. A use and occupancy permit may be revoked if the Director or the Director's designee finds that the building or the building's occupant violates County zoning or business licensing requirements.

24-8. [Massage.] Reserved

[(a) *Definitions.* In this Section, terms that are defined in the state Health Occupations Article have the same meaning, and the following words and phrases have the following meanings:

(1) Massage has the same meaning as “massage therapy” under § 3-5A-01 of the Health Occupations Article.

(2) **Massage establishment:** any business where any employee, agent or contractor who is not a certified massage therapist or registered

26 massage practitioner under state law performs a massage.

27 (3) Director: The Director of the Department of Health and Human
28 Services, or the Director's designee.

29 (4) Board: the Maryland State Board of Chiropractic Examiners.

30 (5) Department: the Department of Health and Human Services.]

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

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

35 (2) an athletic trainer who:

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

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

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

44 (3) a business in which every person who performs massage is a
45 certified massage therapist or registered massage practitioner
46 under State law.]

47 [(c) *Massage establishment.*

48 (1) (A) Any massage establishment must have a license issued by
49 the Director under this Section. The licensee is the owner of the
50 establishment. If the owner is not an individual, the owner must
51 designate on the application an individual as the owner's

52 representative. The owner's representative must consent on the
53 application to be so designated. The representative must accept any
54 notice sent to the owner under this Section. If the owner does not
55 pay any fine, penalty, or fee due under this Section, the Director
56 may collect the fine, penalty, or fee from the owner's
57 representative. The owner must not designate an individual as its
58 representative under this subsection if the individual is not
59 qualified to receive a manager's license under subsection (d).

60 (B) The licensee or a licensed manager must be on the premises
61 at all times while the establishment is occupied.

62 (C) A person must not own or operate a massage establishment
63 without obtaining a massage establishment license. This
64 requirement may be enforced by the Director or the Police
65 Department.

66 (D) The Director or the Police Department may close an
67 unlicensed massage establishment until the business and
68 each person owning or operating the business obtains a
69 license under this Section.

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

73 (A) the applicant meets the requirements of this Section, is
74 qualified under standards set by Executive Regulation, and
75 completes a license application form provided by the
76 Director;

- 77 (B) the massage establishment facility meets minimum
78 standards set by Executive Regulation;
- 79 (C) the applicant pays an application fee and license fee; and
- 80 (D) the establishment complies with all applicable zoning,
81 health, fire prevention, and building laws and regulations.
- 82 (3) The Director must conduct a precicensing inspection of any
83 massage establishment, and may conduct other inspections
84 necessary to enforce this Section.
- 85 (4) A massage establishment must meet minimum standards set by
86 regulation at all times.
- 87 (5) Any person who operates a massage establishment must not
88 perform or allow another person to perform a massage unless the
89 person who performs the massage:
- 90 (A) is a certified massage therapist or registered massage
91 practitioner under state law; or
- 92 (B) has a valid County massage worker's license.
- 93 (6) Any person who operates a massage establishment must permit a
94 County police officer or the Director to enter the massage
95 establishment at any time during operating hours, and at any other
96 time in an emergency or when the establishment is occupied.
- 97 (7) Any person who operates a massage establishment must not allow
98 a person of one gender to massage a person of another gender.
99 This restriction does not apply of the person who performs the
100 massage is a State-certified massage therapist or registered
101 massage practitioner.

- 102 (8) A massage establishment license has a term of one year and must
103 be renewed annually.
- 104 (9) (A) A massage establishment license must not be transferred
105 from one person to another.
- 106 (B) A massage establishment license must not be transferred
107 from a location to another location until a license is issued
108 for the new location.
- 109 (C) A massage establishment license applies to a single location
110 specified in the license.
- 111 (10) If an applicant for a massage establishment license does not own
112 the building where the establishment would be located, the
113 building owner must approve the use of the building as a massage
114 establishment on a form provided by the Director.]
- 115 [(d) *Massage establishment manager.*
- 116 (1) The licensee, if an individual, and any person who manages a
117 massage establishment in the absence of the licensee, including an
118 owner's representative designated under subsection (c)(1)(A),
119 must obtain a massage establishment manager's license from the
120 Director and renew the license each year.
- 121 (2) Except as otherwise provided in this Section, the Director must,
122 with the assistance of the Police Department, review each
123 application and issue a license if the applicant is qualified under
124 this Section and the standards established by regulation. Each
125 applicant must:
- 126 (A) complete an application form provided by the Director;
127 (B) submit proof of good health required by the Director;

- 128 (C) pay the application and license fee;
- 129 (D) be at least 18 years old;
- 130 (E) have not been convicted of, pled guilty or nolo contendere
- 131 to, or served any term of probation as a result of being
- 132 charged with:
- 133 (i) a felony;
- 134 (ii) a crime involving moral turpitude;
- 135 (iii) violation of a controlled dangerous substances law;
- 136 or
- 137 (iv) violation of any law regulating the practice of a health
- 138 occupation;
- 139 (F) not habitually use any drug or alcoholic beverage to an
- 140 extent that impairs professional performance;
- 141 (G) provide a passport-size photograph, fingerprints, and a list
- 142 of the applicant's occupation or employment for the 3 years
- 143 before filing the application; and
- 144 (H) if the applicant is not a United States citizen, provide
- 145 evidence of legal presence and employability in the United
- 146 States.]

147 [(e) *Massage worker.*

- 148 (1) Any person who performs massage for compensation and who is
- 149 not a certified massage therapist or registered massage practitioner
- 150 under state law must obtain a massage worker's license from the
- 151 Director and renew the license each year. An individual may apply
- 152 for a license under this subsection only if the individual is
- 153 expressly exempt under § 3-5A-05(a)(2) of the Health

Occupations Article from the certification and registration requirements of that section.

(2) Except as otherwise provided in this Section, the Director must, with the assistance of the Police Department, review each application and issue a license if the applicant is qualified under this Section and the standards established by regulation. Each applicant must:

- (A) complete an application form provided by the Director;
- (B) submit proof of good health;
- (C) pay the application and license fee;
- (D) be at least 18 years old;
- (E) have satisfactorily completed at least 60 credit hours of education at an institution of higher education as defined by State law;
- (F) have successfully completed at least 500 hours of massage training provided by an organization approved by the Board; and
- (G) have not been convicted of, pled guilty or nolo contendere to, or served any term of probation as a result of being charged with:
 - (i) a felony;
 - (ii) a crime involving moral turpitude;
 - (iii) violation of a controlled dangerous substances law; or
 - (iv) violation of any law regulating the practice of a health occupation;

- 180 (H) not habitually use any drug or alcoholic beverage to an
 181 extent that impairs professional performance;
- 182 (I) provide a passport size photograph, fingerprints, and a list
 183 of the applicant's occupation or employment for the 3 years
 184 before filing the application; and
- 185 (J) if the applicant is not a United States citizen, provide
 186 evidence of legal presence and legal employability in the
 187 United States.
- 188 (3) A person who holds a license issued under this Section and who is
 189 not a certified massage therapist or registered massage practitioner
 190 under state law must not perform massage except as the agent or
 191 employee of a massage establishment that has a valid County
 192 license.
- 193 (4) A massage worker licensed under this subsection must only
 194 massage persons of the worker's same gender.
- 195 (5) A massage worker's license must not be transferred from one
 196 individual to another.]
- 197 [(f) *Fees.* The County Executive must set application and license fees by
 198 Executive Regulation under method (3) that substantially cover the cost
 199 of administering this Section.]
- 200 [(g) *Denial or Revocation of license.* The Director may refuse to issue a
 201 license under this Section, and may suspend or revoke a license issued
 202 under this Section, after a hearing for which reasonable notice has been
 203 given, if the licensee or applicant:
- 204 (1) violates any provision of this Section;

- 205 (2) submits fraudulent information in support of a license application
- 206 under this Section;
- 207 (3) is convicted of, or pleads guilty or nolo contendere to, or is ordered
- 208 to serve a period of probation after being charged with:
- 209 (A) a felony;
- 210 (B) a crime involving moral turpitude;
- 211 (C) violation of a controlled dangerous substance law; or
- 212 (D) violation of any law regulating the practice of a health
- 213 occupation;
- 214 (4) habitually uses any drug or alcoholic beverage to an extent that
- 215 impairs professional performance; or
- 216 (5) is grossly negligent in the performance of massage.]

217 [(h) *Notice and opportunity for hearing.*

- 218 (1) Notice. After finding that one or more grounds for denial,
- 219 suspension, or revocation of a license could exist, the Director may
- 220 serve a written notice on the licensee or applicant in person or by
- 221 regular mail, postage prepaid, addressed to the person's last known
- 222 address as maintained in the Director's file. Service on that person
- 223 by mail is effective 3 days after mailing. The Director must also
- 224 post a written notice at a conspicuous place on the establishment
- 225 for which the license was or would be issued. The written notice
- 226 must, at a minimum:
- 227 (A) state that the Director has found that the licensee or
- 228 applicant may be subject to denial, suspension, or
- 229 revocation;
- 230 (B) identify the specific grounds for the Director's findings; and

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

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

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

250 (4) *Notice and Effective Date of Suspension or Revocation.* The
251 Director's written decision must be posted at the office of the
252 Director and must be served on the licensee or applicant in person
253 or by regular mail, postage prepaid, addressed to the applicant or
254 licensee's last known address as maintained in the Department's
255 files. The Director must also post a written notice of the decision
256 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.]

[(i) 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.]

[(j) 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 Police 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.]

283 [(k) *Appeals.*

284 (1) Any person aggrieved by the denial, suspension, or revocation of
 285 any license under this Section may seek judicial review under the
 286 Maryland rules for review of administrative decisions.

287 (2) The Director's decision to deny a license must not be stayed
 288 pending appeal. Final administrative action that revokes or
 289 suspends a license may be stayed pending appeal only if:

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

292 (B) a bond of \$100,000 is posted.]

293 [(l) *Penalty.* A person has committed a class A violation if the person:

294 (A) violates any provision of this Section; or

295 (B) submits fraudulent information in support of a license
 296 application under this Section]

297 **24-8B. Bodywork Establishments.**

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

300 *Bodywork* means the practice of using one's hands or another part of the
 301 body to apply pressure on an individual's fully clothed body or bare feet
 302 to affect the electromagnetic energy, energetic field, or energy meridians
 303 of the human body. Bodywork includes the practice of reflexology or
 304 acupressure.

305 *Bodywork establishment* means any business [that]:

306 (1) that advertises bodywork or massage therapy services; or

307 (2) where any employee, agent, or contractor performs bodywork or
 308 massage therapy service on an individual for compensation.

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

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

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

314 *Massage therapy* means the practice defined in §6-101(f) of the Health
315 Occupations Article of the Annotated Code of Maryland.

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

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

322 (1) [an individual with a license, registration, or other approval issued
323 by the Maryland State Board of Chiropractic and Massage Therapy
324 Examiners to provide massage under §3-5A-05 of the Health
325 Occupations Article] an individual in a health care setting under
326 the supervision of a licensed medical doctor;

327 (2) an athletic trainer who:

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

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

- 334 (C) is employed by a professional sports team, while treating
335 members of that team[]; or
- 336 (3) a business in which every person who provides services is a
337 certified massage therapist or registered massage practitioner
338 under State law].
- 339 (c) *Bodywork establishment.*
- 340 (1) *License required.* A bodywork establishment must have a license
341 issued by the Director under this Section. The licensee must be the
342 owner of the establishment. If the owner is not an individual, the
343 owner must designate on the application an individual as the
344 owner's representative. The owner's representative must consent
345 on the application to be so designated. The representative must
346 accept any notice sent to the owner under this Section. If the owner
347 does not pay any fine, penalty, or fee due under this Section, the
348 Director may collect the fine, penalty, or fee from the owner's
349 representative.
- 350 (2) Except as otherwise provided in this Section, the Director must,
351 with the assistance of the Police Department, review each
352 application and issue a bodywork establishment license if:
- 353 (A) the applicant meets the requirements of this Section and
354 completes a license application on a form provided by the
355 Director;
- 356 (B) the bodywork establishment facility meets the minimum
357 standards set by Executive Regulation;
- 358 (C) the applicant pays an application fee and license fee; and

- 359 (D) the establishment complies with all applicable zoning,
360 health, fire prevention, and building laws and regulations.
- 361 (3) The Director must conduct a pre-licensing inspection of any
362 bodywork establishment[,] and may conduct other inspections
363 necessary to enforce this Section.
- 364 (4) A bodywork establishment must [continue to] meet the minimum
365 standards set by regulation at all times.
- 366 (5) Any person who operates a bodywork establishment must permit
367 a County police officer or the Director to enter the bodywork
368 establishment at any time during operating hours, and at any other
369 time in an emergency or when the establishment is occupied.
- 370 (6) Any person who operates a bodywork establishment must not
371 allow a person to perform any sexual activity with another person
372 in the establishment.
- 373 (7) A bodywork establishment license has a term of one year and must
374 be renewed annually.
- 375 (8) A bodywork establishment license;
376 (A) must not be transferred from one person to another;
377 (B) must not be transferred from one location to another
378 location until a license is issued for the new location; and
379 (C) applies to a single location specified in the license.
- 380 (9) If an applicant for a bodywork establishment license does not own
381 the building where the establishment would be located, the
382 building owner must approve the use of the building as a bodywork
383 establishment on a form provided by the Director.

(10) Any person who performs bodywork or massage therapy services at a bodywork establishment in the County must be licensed or registered to practice massage therapy by the State Board of Massage Therapy Examiners.

(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 or massage therapy 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]

409 (F) submit proof that each individual performing bodywork or
 410 massage therapy services at the establishment is licensed or
 411 registered to perform massage therapy by the State Board of
 412 Massage Therapy Examiners; and

413 [(F)](G) if the applicant is not a United States citizen, provide
 414 evidence of legal presence and employability in the United
 415 States.

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

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

- 425 (1) violates any provision of this Section;
- 426 (2) submits fraudulent information in support of a license application
 427 under this Section;
- 428 (3) is convicted of, or pleads guilty or nolo contendere to, or is ordered
 429 to serve a period of probation after being charged with:
 - 430 (A) a felony;
 - 431 (B) a crime involving moral turpitude, including solicitation,
 432 prostitution, and related crimes;
 - 433 (C) violation of a controlled dangerous substance law; or

434 (D) violation of any law regulating the practice of a health
 435 occupation;

436 (4) permits an individual to perform bodywork services in the
 437 establishment while under the influence of a non-prescribed drug
 438 or alcoholic beverage; [or]

439 (5) is grossly negligent in the performance of bodywork; or

440 (6) permits an individual to perform bodywork or massage therapy
 441 services in the establishment who is not licensed or registered to
 442 perform massage therapy by the State Board of Massage Therapy
 443 Examiners.

444 (g) *Notice and opportunity for hearing.*

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

454 (A) state that the Director has found that the licensee or
 455 applicant may be subject to denial, suspension, or
 456 revocation;

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

458 (C) set a date for a hearing on denial of the application or
 459 suspension or revocation of the license. The hearing must

460 be held at least 5 days after service of the Director's notice,
461 unless the parties agree to an earlier date.

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

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

478 (4) *Notice and Effective Date of Suspension or Revocation.* The
479 Director's written decision must be posted at the office of the
480 Director and must be served on the licensee or applicant in person
481 or by regular mail, postage prepaid, addressed to the applicant or
482 licensee's last known address as maintained in the Department's
483 files. The Director must give the owner of the property]], where
484 the establishment is located,]] written notice of the decision by
485 regular mail, postage prepaid, addressed to the landowner's last

known address as maintained in the Maryland State Department of Assessments and Taxation. 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:

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

515 (j) *Appeals.*

- 516 (1) Any person aggrieved by the denial, suspension, or revocation of
- 517 any license under this Section may seek judicial review under the
- 518 Maryland Rules for review of administrative decisions in the
- 519 Circuit Court and the Court of Special Appeals.
- 520 (2) Except as provided in subsection (3), the Director's decision to
- 521 deny a license must not be stayed pending appeal.
- 522 (3) Final administrative action that revokes or suspends a license may
- 523 be stayed pending appeal only if:
- 524 (A) the Court finds that the public health, safety, or welfare will
- 525 not be endangered during the appeal; and
- 526 (B) an appropriate bond is posted.

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

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

531 **Sec. 2. Effective Date**

532 This Act takes effect on July 1, 2021.

LEGISLATIVE REQUEST REPORT

Bill 1-20

Health and Sanitation – Bodywork Establishments - Licensing

DESCRIPTION:	Bill 1-20 would delete the provisions concerning massage establishments and expand the scope of bodywork establishments to include massage establishments. There are no County licensed massage establishments, and this would clean-up code provisions without reducing the activities of County concern. To be a licensed bodywork establishment, Bill 1-20 would require every individual performing bodywork services to be a certified massage therapist or registered massage practitioner. Bill 1-20 would also amend the County Code concerning building permits to require compliance with all County licensing requirements as a condition of building permits and allow the revocation of use and occupancy permits for zoning and licensing violations.
PROBLEM:	The current requirements for bodywork establishments allow owners to use unqualified employees to physically manipulate their customer. In addition, the compliance with the County's licensing requirements is not currently within the enforcement authority of the Department of Permitting Services.
GOALS AND OBJECTIVES:	To solve the described problem.
COORDINATION:	Departments Health and Human Services and Permitting Services; State Board of Massage Therapy Examiners (required consultation)
FISCAL IMPACT:	To be requested
ECONOMIC IMPACT:	To be requested
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Jeffrey L. Zyontz, Senior Legislative Analyst 240-777-7896
APPLICATION WITHIN MUNICIPALITIES:	Bill 1-20 would be applicable within municipalities if it is approved as a Board of Heath resolution.
PENALTIES:	A violation of Section 24-9 is a Class C violation. A license violation may result in revoking the establishment's use and occupancy permit.

Resolution No.: _____
Introduced: January 14, 2020
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH**

Lead Sponsor: Councilmember Rice and Council Vice President Hucker

SUBJECT: Resolution to adopt Bill 1-20, Health and Sanitation – Bodywork Establishments – Licensing – Amendments as a Board of Health Regulation.

Background

1. County Code §2-65, as amended, provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law.
2. Maryland Code Health-General Article §3-202 authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On {DATE}, the Council held a public hearing on this regulation. As required by law, each municipality in the County and the public were properly notified of this hearing.
4. On {DATE}, the County Council enacted Bill 1-20, Health and Sanitation - Bodywork Establishments - Licensing. Bill 1-20 require every individual performing bodywork services to be a certified massage therapist or registered massage practitioner.
5. The County Council, sitting as the Board of Health, finds after reviewing the evidence in the record that requiring every individual performing bodywork services to be a certified massage therapist or registered massage practitioner as required by this Regulation is necessary to protect the health of County residents.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, approves the following resolution:

1. The provisions of Section 24-8B of the Montgomery County Code, as added by Bill 1-20, Health and Sanitation - Bodywork Establishments -- Licensing - Amendments, are adopted as a Board of Health regulation. A copy of Bill 1-20 is attached to this resolution.
2. This resolution takes effect 90 days after adoption.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.,
Clerk of the Council

Date