

Chapter 14

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***Charter reference(s)**--Issuance of licenses, § 12; privilege taxes, regulation of businesses, § 17.

Cross reference(s)—Offenses against property, § 38-31 et seq.; signs and advertising, ch. 42; taxation, ch. 58; B-1 district, § 66-141 et seq.

State law reference(s)—Sale of ice cream and similar products, state preemption, Code of Virginia, § 3.1-562.4; going-out-of-business sales, Code of Virginia, §§ 18.2-223, 18.2-224; licensing of bail bondsmen, Code of Virginia, § 19.2-152.1; professions and occupations, Code of Virginia, tit. 54.1; regulation of precious metals dealers, Code of Virginia, § 54.1-4111; records of firearms dealers, Code of Virginia, § 54.1-4200 et seq.; local license taxes, Code of Virginia, § 58.1-3700 et seq.; enforcement, collection, refunds, remedies and review of local taxes, Code of Virginia, § 58.1-3900 et seq.

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ARTICLE I. IN GENERAL**Sec. 14-1. 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.

(Code 1981, § 3-8)

Sec. 14-2. Keeping of permanent register by lodging facilities.

(a) 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. 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) 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.

(c) The register provided for in this section shall be open to inspection by law enforcement officers of the town and of this state.

(d) 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.

(Code 1981, § 5-55)

State law reference(s)—Guest registers, Code of Virginia, § 35.1-9.

Secs. 14-3--14-35. Reserved.

ARTICLE II. LICENSES

DIVISION 1. GENERALLY

Sec. 14-36. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Acted responsibly means that the taxpayer:

- (1) Exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and
- (2) 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 means:

- (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 percent of the voting power of all classes of stock and at least 80 percent 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 percent of the voting power of all classes of stock and at least 80 percent 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 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation; and

- b. More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent 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.

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 means 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 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 means the town treasurer.

Base year means the calendar year preceding the license year, except for contractors subject to the provisions of Code of Virginia, § 58.1-3715, or unless this article 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 means an agent of a buyer or a seller who buys or sells stocks, bonds, commodities or services, usually on a commission basis.

Business means 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 means 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 means staples such as wool, cotton, etc., which are traded on a commodity exchange and on which there is trading in futures.

Contractor means as prescribed in Code of Virginia, § 58.1-3714(B), whether such work is done or offered to be done by day labor, general contract or subcontract.

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

Definite place of business means 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 means 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 include but are 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 provided the erroneous information.

Financial services means 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.

Working capital financing.

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

Itinerant vendor means 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 means 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 means the calendar year for which a license is issued for the privilege of engaging in business.

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

Peddler at wholesale means 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 shall mean rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this article, or rendered in any other business or occupation not specifically classified in this article unless exempted from local license tax by Code of Virginia, tit. 58.1.

Professional services means 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 Code of Virginia, § 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 means 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 means 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 article; 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.

Rental agents for real estate.

Retailer or retail merchant means 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 (Code of Virginia, § 13.1-501 et seq.) or in similar laws of the United States regulating the sale of securities.

Services means things purchased by a customer that do not have physical characteristics, or are not goods, wares or merchandise.

Sponsor means any person that organizes an itinerant vendor event or solicits and receives applications from itinerant vendors for participation in such an event.

Wholesaler or wholesale merchant means 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.

(Code 1981, §§ 4-1.2, 4-4.1(E), 4-20, 4-22, 4-23.1, 4-24, 4-25)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 14-37. Overriding conflicting ordinances.

Except as may be otherwise provided by the laws of the commonwealth, 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 article 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.

(Code 1981, § 4-1.1)

Sec. 14-38. Purpose of article.

It is the purpose and policy of the town council in this article 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 article, 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.

(Code 1981, § 4-2)

Sec. 14-39. Criminal penalties for failure to file returns; false statements.

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 article 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 \$2,500.00 or less, the person shall be subject to a fine of not more than \$500.00. If the amount of the tax lawfully assessed in connection with the return is more than \$2,500.00, the person may be confined in jail for not more than 12 months and fined not more than \$1,000.00, either or both.

(Code 1981, § 4-3)

Sec. 14-40. 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 article 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 Code of Virginia, § 58.1-3717, 58.1-3718, or 58.1-3728, respectively, or is a contractor subject to Code of Virginia, § 58.1-3715, or is a public service corporation subject to Code of Virginia, § 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 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 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 ten percent of the portion paid after the due date.

(e) A penalty of ten percent 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 ten percent 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 acted responsibly and that the failure was due to events beyond his control. The terms “acted responsibly” and “events beyond the taxpayer’s control” are defined in Virginia 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 Code of Virginia, § 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.

(Code 1981, § 4-4.1; Ord. O-2007-3, § 14-40)

Sec. 14-41. Situs of gross receipts.

(a) *General rule.* Whenever the tax imposed by this article 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 services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of Code of Virginia, § 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 Code of Virginia, § 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 percent 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 Code of Virginia, § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the provisions of Code of Virginia, § 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 Code of Virginia, § 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.

(Code 1981, § 4-4.2)

Sec. 14-42. Limitations and extensions.

(a) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this article, 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 Code of Virginia, § 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 Code of Virginia, § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this subsection, two years after the final determination of an appeal for which collection has been stayed pursuant to section 14-43(b) and (d), or two years after the final decision in a court application pursuant to Code of Virginia, § 58.1-3984, or similar law for which collection has been stayed, whichever is later.

(Code 1981, § 4-4.3)

Sec. 14-43. Appeals and rulings.

(a) Any person assessed with a licensing tax under this article 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 section 14-40(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 property from the town, to conceal himself or his 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 article as a result of an audit may apply within 90 days of the determination by the assessing official on an application pursuant to subsection (a) of this section 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 Code of Virginia, § 58.1-1821, and the tax commissioner may issue an order correcting such assessment pursuant to Code of Virginia, § 58.1-1822. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to Code of Virginia, § 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 subsection (c) of this section, 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 section 14-40(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 subsection (b) of this section.

(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.

(Code 1981, § 4-4.4)

Sec. 14-44. Recordkeeping 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.

(Code 1981, § 4-4.5)

Sec. 14-45. 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 commonwealth 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.
 - (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.
 - (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.

(Code 1981, § 4-4.6)

Sec. 14-46. License fee and tax.

Every person or business subject to licensure under this article 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 \$30.00. 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 article:

- (1) For contractors and persons constructing for their own account for sale, \$0.16 per \$100.00 of gross receipts (Code of Virginia, §§ 58.1-3706, 58.1-3714 and 58.1-3715).
- (2) For retailers, \$0.20 per \$100.00 of gross receipts (Code of Virginia, § 58.1-3706).
- (3) For financial, real estate and professional services, \$0.33 per \$100.00 of gross receipts (Code of Virginia, § 58.1-3706).
- (4) For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this article or otherwise by law, \$0.20 per \$100.00 of gross receipts (Code of Virginia, § 58.1-3706).
- (5) For wholesalers, \$0.05 per \$100.00 of purchases (Code of Virginia, § 58.1-3716).
- (6) Hotels, motels, lodging, etc., \$0.26 per \$100.00 of gross receipts (Code of Virginia, § 58.1-3703(C)(7)).
- (7) For photographers, with no regularly established place of business in the commonwealth, \$10.00 per year (Code of Virginia, § 58.1-3727).
- (8) For savings and loan associations and state-chartered credit unions, \$50.00 per year (Code of Virginia, § 58.1-3730).

(Code 1981, § 4-4.7)

Sec. 14-47. Procedure for obtaining license generally.

(a) Every person liable for the payment of a license tax under the provisions of this article 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 article. 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.

(Code 1981, § 4-6)

Sec. 14-48. 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 article, 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 ten percent per annum shall accrue from the date of the additional assessment until the time of payment.

(Code 1981, § 4-10)

Sec. 14-49. 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.

(Code 1981, § 4-11)

Sec. 14-50. 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 article 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 subsection (b) of this section 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 ten percent and interest of ten percent 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 percent of the actual taxes ultimately due. In case of an overestimate, the taxpayer shall be entitled to a credit upon his license tax payable the following year.

(Code 1981, § 4-12; Ord. of 1-13-1998)

Sec. 14-51. License to be personal privilege; suspension.

Every license issued under this article 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 section 14-52, 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.

(Code 1981, § 4-13)

Sec. 14-52. Transferability.

A license issued under this article shall not be transferred from one person to another. A new owner is required to obtain a beginner's license in accordance with section 14-50. If a business changes name without change of ownership, the change shall be so stated in writing to the town treasurer.

(Code 1981, § 4-14)

Sec. 14-53. Multiple places of business.

No single license shall be issued under this article to cover more than one place of business.

(Code 1981, § 4-15)

Sec. 14-54. 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.

(Code 1981, § 4-16)

Sec. 14-55. Treasurer as enforcement official; production of books and papers.

The town treasurer is given the responsibility of enforcing the provisions of this article. 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. Any person who refuses to answer under oath questions touching any person's tax liability shall be deemed guilty of a class 4 misdemeanor.

(Code 1981, § 4-17)

Sec. 14-56. Display of license.

The license form issued to show payment of the license taxes imposed by any section of this article 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 inspection.

(Code 1981, § 4-18)

Sec. 14-57. 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 66.

(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.

(Code 1981, § 4-19)

Secs. 14-58—14-90. Reserved.

DIVISION 2. SPECIAL LICENSE TAX PROVISIONS*

Sec. 14-91. Carnivals, circuses, performances, penalties, certain restrictions.

(a) There shall be a license tax of \$1,000.00 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. Every person who exhibits or gives a performance or exhibition of any of the shows, carnivals or circuses described in this section, without the license required, shall be fined not less than \$50.00 nor more than \$500.00 for each offense.

(b) A resident mechanic or artist may exhibit any production of his 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 subsection, 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 subsection (b) of this section 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.

***Cross reference(s)**—Taxation, ch. 58.

(Code 1981, § 4-20)

Sec. 14-92. 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 \$1,000.00. Any person who engages in business as a fortuneteller without the license required shall be guilty of a class 3 misdemeanor.

(Code 1981, § 4-21)

Sec. 14-93. Peddlers; itinerant vendors.

A peddler or an itinerant vendor shall pay for the privilege of conducting such business an annual license fee of \$500.00. This section shall not apply to a peddler at wholesale or to those who sell or offer for sale, in person or by their 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 section 14-94.

(Code 1981, § 4-22)

Sec. 14-94. 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.

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

(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 \$2500.00.

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

(Code 1981, §§ 4-23.1--4-23.4); (Ord. O-2007-02, § 94)

Sec. 14-95. Penalty for violation.

Any person violating any provision of sections 14-93 and 14-94 shall be guilty of a class 2 misdemeanor.

(Code 1981, § 4-23.5)

Sec. 14-96. 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.

(Code 1981, § 4-24)

Sec. 14-97. Direct sellers.

No license tax shall be levied on a direct seller unless the total sales of such seller exceed \$4,000.00 per year. The rate of tax levied on a direct seller whose total sales exceed \$4,000.00 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 place of abode.

(Code 1981, § 4-25)

Sec. 14-98. 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:

- (1) Licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants;
- (2) Distributor or vendor of motor fuels and petroleum products;
- (3) Distributor or vendor of seafood, who catches seafood and sells only the seafood caught by him;
- (4) Farmer or producer of agricultural products who sells only the farm or agricultural products produced or grown by him;
- (5) Farmers' cooperative association;
- (6) Manufacturer who is subject to state tax on intangible personal property who peddles at wholesale only the goods, wares or merchandise manufactured by him at a plant whose intangible personal property is taxed by this commonwealth.

(Code 1981, § 4-26)

Sec. 14-99. 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.

(Code 1981, § 4-27)

Sec. 14-100. 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 one-half of one percent (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 Section 58.1-2600 of the Code of Virginia, or on gas suppliers, gas utilities or electric suppliers, as defined in Section 58.1-400.2, except as provided in Section 58.1-2901 D.

(Ord. O-2001-02, § 14-100)

Secs. 14-101—14-120. Reserved.

DIVISION 3. CLASSIFIED BUSINESS AND OCCUPATIONAL PROVISIONS

Sec. 14-121. 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.

(Code 1981, § 4-29)

Sec. 14-122. Relationship to licensing requirements of the commonwealth.

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

(Code 1981, § 4-30)

Sec. 14-123. Restaurants.

No license required under this article 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.

(Code 1981, § 4-31)

Secs. 14-124—14-155. Reserved.

ARTICLE III. MASSAGE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 14-156. 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.

(Ord. of 6-23-1997, § I(20-2))

Sec. 14-157. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Director means the director of the county health district, or his designee.

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

Massage therapy means 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 means 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 means the pubic area, penis, scrotum, vulva, perineum, anus or female breasts.

(Ord. of 6-23-1997, § I(20-3))

Cross reference(s)—Definitions generally, § 1-2.

Sec. 14-158. Violations of article.

Any person violating any provision of this article shall be guilty of a class 1 misdemeanor.

(Ord. of 6-23-1997, § I(20-4))

Sec. 14-159. Right of entry to enforce article.

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 article, for the purpose of enforcing the provisions. This section shall not restrict or limit the right of entry vested in any law enforcement agency.

(Ord. of 6-23-1997, § I(20-5))

Sec. 14-160. Revocation or suspension of permits issued under article.

(a) Any massage establishment permit or massage therapist's permit granted under this article 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 ten percent or more of its capital stock):

- (1) Has been convicted, pleaded nolo contendere or suffered a forfeiture on a charge of violating any provision of Code of Virginia, §§ 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.

- (2) Has been convicted, pleaded nolo contendere or suffered a forfeiture on a charge of violating any provision of this article relating to massage establishments, or on a charge of violating a similar law in any other jurisdiction.
- (3) Has made a false statement on the application for the permit.
- (4) Has failed to make the report required by section 14-164.

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 article does not conform to the standards set forth in this article, or that the permittee has refused the director or other authorized person the right to enter the premises to enforce the provisions of this article, the director may enter an order for the immediate suspension of the massage establishment permit until such time as he 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 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.

(Ord. of 6-23-1997, § I(20-6))

Sec. 14-161. Compliance with chapter 66 and building code.

Massage establishments shall be located in a proper zoning district, as specified in chapter 66. Each such establishment and its facilities shall be in conformity with all applicable requirements of the Virginia Uniform Statewide Building Code.

(Ord. of 6-23-1997, § I(20-7))

Sec. 14-162. 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.

(Ord. of 6-23-1997, § I(20-8))

Sec. 14-163. Display of copy of article.

A copy of this article 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.

(Ord. of 6-23-1997, § I(20-9))

Sec. 14-164. Information to be reported to director.

(a) Each person to whom a massage establishment permit is issued under division 2 of this article shall report to the director any change in any of the information required by section 14-192, such report to be made within 14 days of learning of the change.

(b) Each holder of a massage therapist's permit issued under division 3 of this article shall report to the director any change in any of the information required in section 14-222, such report to be made within 14 days of learning of the change.

(Ord. of 6-23-1997, § I(20-10))

Sec. 14-165. Requirements for massage establishments.

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

(b) Minimum ventilation shall be provided in accordance with the Virginia 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.

(Ord. of 6-23-1997, § I(20-11))

Sec. 14-166. Cleanliness of therapists.

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

(Ord. of 6-23-1997, § I(20-12))

Sec. 14-167. 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.

(Ord. of 6-23-1997, § I(20-13))

Sec. 14-168. Massaging, exposing sexual or genital parts.

(a) It shall be unlawful for any person in a massage establishment to place his hands upon, to touch with any part of his 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 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 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 control or supervision to perform any act prohibited by this section.

(Ord. of 6-23-1997, § I(20-14))

Secs. 14-169—14-190. Reserved.

DIVISION 2. ESTABLISHMENT PERMIT

Sec. 14-191. Required.

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

(Ord. of 6-23-1997, § II(20-15))

Sec. 14-192. Application.

(a) Each application for a massage establishment permit required by this article 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 ten percent of the stock of the corporation. If one or more of the stockholders owning more than ten percent 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 ten percent 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 ten percent of the stock of the corporation.
- (5) If the applicant is an individual, the birthdate of the applicant. If the applicant is a partnership, the birthdate of each partner. If the applicant is a corporation, the birthdate of each of the officers and directors of such corporation and of each stockholder owning more than ten percent 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 ten percent of the stock of the corporation. The fingerprints shall be taken by the town sergeant or his 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 ten percent 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 ten percent of the stock of the applicant corporation.
- (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 \$65.00, no part of which shall be refundable. Such fee shall be in addition to any permit fee required by this article and any business license tax imposed by the town.

(Ord. of 6-23-1997, § II(20-16))

Sec. 14-193. Inspection of applicant's premises.

Upon receipt of an application for a permit under this article, 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.

(Ord. of 6-23-1997, § II(20-17))

Sec. 14-194. Fee.

The annual fee for a massage establishment permit shall be \$25.00, 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.

(Ord. of 6-23-1997, § II(20-18))

Sec. 14-195. Issuance or denial.

A massage establishment permit shall be issued by the director when all provisions of this article

have been complied with if he determines, from the inspections and reports provided for in section 14-193 and from the information contained in the permit application, that the establishment meets the requirements of this article and that the applicant is qualified under the requirements of this article to engage in such business in the town. Such permit shall be denied if the director finds any condition to exist that would be grounds for the revocation of a permit under section 14-160.

(Ord. of 6-23-1997, § II(20-19))

Sec. 14-196. Term.

A permit issued under this article shall be valid for one year from the date of issuance unless sooner suspended or revoked pursuant to section 14-160.

(Ord. of 6-23-1997, § II(20-20))

Sec. 14-197. 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.

(Ord. of 6-23-1997, § II(20-21))

Sec. 14-198. Transfer.

(a) No permit issued under this article shall be transferable from one person to another.

(b) 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 article are complied with.

(Ord. of 6-23-1997, § II(20-22))

Secs. 14-199--14-220. Reserved.

DIVISION 3. MASSAGE THERAPIST PERMIT

Sec. 14-221. Required.

(a) 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 has a valid unsuspended massage therapist's permit issued pursuant to this division and is certified as a massage therapist by the board of nursing of the commonwealth or has been specifically exempted from the definition of "massage therapy" in section 14-157.

(b) 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.

(Ord. of 6-23-1997, § III(20-23))

Sec. 14-222. Application.

Each application for a massage therapist permit 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) 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 agent.
- (7) Written proof that the applicant is 18 years of age or older.

(Ord. of 6-23-1997, § III(20-24))

Sec. 14-223. 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 commonwealth.

(Ord. of 6-23-1997, § III(20-25))

Sec. 14-224. Applicant's health certificate.

Each applicant for a permit under this division 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 article and to protect the health of patrons and other persons in massage establishments.

(Ord. of 6-23-1997, § III(20-26))

Sec. 14-225. Investigation of applicant's criminal record.

Upon receipt of an application for a permit under this division, the director shall request that the town sergeant make or cause to be made a thorough investigation of the criminal record of the applicant.

(Ord. of 6-23-1997, § III(20-27))

Sec. 14-226. Fee.

The annual fee for a massage therapist's permit shall be \$15.00, 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.

(Ord. of 6-23-1997, § III(20-28))

Sec. 14-227. 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 division; 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 section 14-160.

(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.

(Ord. of 6-23-1997, § III(20-29))

Sec. 14-228. Nontransferable.

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

(Ord. of 6-23-1997, § III(20-30))

Sec. 14-229. 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.

(Ord. of 6-23-1997, § III(20-31))

Sec. 14-230. 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 division; however, applicants whose fingerprints are currently on file with the director shall not be required to provide fingerprints when applying for a new permit.

(Ord. of 6-23-1997, § III(20-32))