

ORDINANCE 13-2020

**BOROUGH OF EATONTOWN
COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

AN ORDINANCE AMENDING CHAPTER 201, OF THE BOROUGH CODE ENTITLED MASSAGE, BODYWORK AND SOMATIC THERAPY BUSINESSES TO CLARIFY LICENSING REQUIREMENTS AND ENFORCEMENT PROCEDURES

WHEREAS, N.J.S.A. 40:52-1(g) authorizes a governing body to make, amend, repeal and enforce ordinances to license and regulate any kind of business conducted in the municipality and the places and premises in or at which the business is conducted and carried out; and

WHEREAS, N.J.S.A. 40:48-2 authorizes a municipality to make, amend, repeal and enforce such ordinances and regulations as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants.

WHEREAS, the Borough Council adopted Ordinance 27-2019 establishing new standards and systems to regulate massage parlors in the Borough of Eatontown (the "Massage Parlor Ordinance"); and

WHEREAS, the Chief Police has recommended changes to the Massage Parlor Ordinance and the Borough Council believes it is in the best interest of the Borough of Eatontown to amend the ordinance as recommended by the Police Chief.

NOW, THEREFORE, BE IT ORDAINED, by the BOROUGH COUNCIL OF THE BOROUGH OF EATONTOWN, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY that the Borough Code is hereby amended as follows:

SECTION 1

Sections 201-3 to 201-6 of the Code of the Borough of Eatontown ("Borough Code") shall be amended as follows (additions are underlined and bolded; deletions are [bracketed]):

201-3 License required.

A. Establishment: No person, firm or corporation shall operate any establishment or utilize any premises in the Borough of Eatontown as a massage, bodywork and/or somatic therapy establishment unless or until such person, firm or corporation has obtained a license for such establishment or premises from the Municipal Clerk of the Borough of Eatontown in accordance with the terms and provisions of this chapter.

B. Therapist: No individual shall act as a massage, bodywork and/or somatic therapist without obtaining a municipal license. An applicant must further submit satisfactory evidence of certification from the State of New Jersey pursuant to the Massage and Bodywork Therapist Act, N.J.S.A. 45:11-53 et seq.

C. Nontherapist employee: All nontherapist employees, **all in house cleaning staff**, and nonowners shall complete and submit an application for a municipal certificate to the Borough of Eatontown Clerk, which shall contain the following:

- (1) Name and complete address of the residence and telephone number of the applicant.
- (2) Previous address within the last five years prior to the present address of the applicant.
- (3) Written proof of age.
- (4) Height, weight, sex and color of hair and eyes.
- (5) Two front-facing portrait photographs taken within 30 days of the date of application at least two inches by two inches in size.
- (6) The dates and locations of other places the applicant worked and functioned at a massage therapy business.

- (7) All criminal arrests, charges and convictions other than traffic violations, fully disclosing the time, place, date, disposition and jurisdiction in which convicted, and providing a description of the offense for which the party was convicted and circumstances thereof. The applicant shall execute a waiver of consent to allow fingerprinting and a criminal background check by the Borough of Eatontown pursuant to Subsection D below. Failure to execute such a waiver and consent shall result in denial of a certificate.
- (8) A statement as to whether the applicant, while previously employed in an establishment promoting massage therapy, had a local license or certificate denied, revoked or suspended, or was fired from the aforesaid establishment, and the circumstances of such action.

D. Investigating and fingerprinting of the applicant: All applicants seeking a certificate under this chapter shall obtain a criminal history record check via electronic live scan at one of the approved sites. The applicant shall undergo fingerprinting by the method and/or vendor utilized by the Eatontown Police Department at the time of the application. The applicant shall be responsible for all related fees associated with the fingerprinting process.

201-4 Renewals.

- A. All licenses shall be valid January 1 to December 31 each year.
- B. Licensees may renew their licenses prior to expiration by filing a new application with the Municipal Clerk of the Borough of Eatontown in the manner prescribed in this chapter and accompanied by the requisite fee.
- C. A license for renewal may be denied based on any history of prior violation of this chapter.

D. If an establishment, licensed under this code, fails to renew its license prior to January 31, it shall be deemed to be in violation of this code and subject to appropriate penalties up to and including immediate closure pursuant to 201-9.

201-5 Application for license for establishment and therapist.

A. Establishment: Any person desiring a massage, bodywork and somatic therapy establishment license shall file a written application with the Municipal Clerk of the Borough of Eatontown upon a form provided by the Municipal Clerk. The application form shall contain the following information:

- (1) The type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise.
- (2) The name, style and designation under which the business is to be conducted.
- (3) The business address and all telephone numbers, including facsimile, where business is to be conducted.
- (4) A complete list of the names and residence addresses of all massage, bodywork and somatic therapists and employees of the business and the name and residence address of the manager or other person principally in charge of the operation of the business.
- (5) A sworn statement indicating that all massage, bodywork and somatic therapists employed or to be employed by the establishment or otherwise permitted to work at the establishment have been licensed by the State of New Jersey pursuant to the Massage and Bodywork Therapist Licensing Act, P.L. 1999, c. 19, amended 2007, c. 337.[1]
- (6) The following personal information concerning the applicant(s), if an individual; concerning each stockholder holding more than 10% of the stock of the corporation, each officer and each director if the applicant is a corporation; concerning the partners, including limited partners, if the applicant is a partnership; and concerning the manager or other person principally in charge of the operation of the business shall be provided:
 - (a) The name, complete residence address and resident telephone number.
 - (b) The two previous addresses immediately prior to the present address of the applicant.

- (c) Written proof of age.
 - (d) Height, weight, sex and color of hair and eyes.
 - (e) Two front-facing portrait photographs taken within 30 days of the date of the application and at least two inches by two inches in size.
 - (f) Any massage therapy or similar business history and experience, including, but not limited to, whether or not such person has previously operated in this or another municipality or state under a license or permit or has had such license, certificate or permit denied, revoked or suspended, and the reason therefor, and the business activities or occupations subsequent to such action or denial, suspension or revocation.
 - (g) The dates and locations of other places the applicant worked and functioned at a massage therapy business.
 - (h) All criminal arrests, charges and convictions other than traffic violations, fully disclosing the time, place, date, disposition and jurisdiction in which convicted, and providing a description of the offense for which the party was convicted and circumstances thereof. The applicant shall execute a waiver of consent to allow fingerprinting and a criminal background check by the Borough of Eatontown pursuant to § 201-3D above. Failure to execute such a waiver and consent shall result in denial of a license or certificate.
- (7) At the time the application is filed, a fee as established below shall be paid to the Municipal Clerk of the Borough of Eatontown to cover the cost of processing the application and investigating the facts stated therein.

(8) The applicant shall include a completed W-9 form with its application.

B. Therapist: Any person acting as a therapist in an establishment as defined above shall file a written application with the Municipal Clerk of the Borough of Eatontown on a form provided by the Municipal Clerk.

(1) The application shall include:

- (a) Copy of certificate from State of New Jersey pursuant to N.J.S.A. 45:11-53 et seq.
- (b) Name and complete address of the residence and telephone number of the applicant.
- (c) Previous address within the last five years prior to the present address of the applicant.
- (d) Written proof of age.
- (e) Height, weight, sex and color of hair and eyes.
- (f) Two front-facing portrait photographs taken within 30 days of the date of application at least two inches by two inches in size.
- (g) The dates and locations of other places the applicant worked and functioned at a massage therapy business.
- (h) All criminal arrests, charges and convictions other than traffic violations, fully disclosing the time, place, date, disposition and jurisdiction in which convicted, and providing a description of the offense for which the party was convicted and circumstances thereof. The applicant shall execute a waiver of consent to allow fingerprinting and a criminal background check by the Borough of Eatontown pursuant to § 201-3D above. Failure to execute such a waiver and consent shall result in denial of a certificate.

201-6 License issuance requirements.

A. The Municipal Clerk of the Borough of Eatontown, upon receiving an application for a massage, bodywork and somatic therapy establishment license, shall refer the application to the appropriate municipal departments and divisions for review and conformance with applicable state and Borough codes for such an establishment.

B. No massage, bodywork and somatic therapy establishment shall be issued a license or be operated, established, or maintained in the Borough of Eatontown unless inspections, **which must be completed prior to issuance or renewal of a license under this code,** by the appropriate Borough departments reveal that the establishment complies with the minimum requirements of the Uniform Construction Code and Health Codes for businesses operating in the Borough of Eatontown. In addition, the establishment must comply with each of the following minimum requirements:

- (1) All massage tables, bathtubs, shower stalls, steam or bath areas and floors shall be constructed of material and surfaces which are smooth, nonabsorbent and which may be readily disinfected.
- (2) A public restroom shall be available to clients and employees during all business hours.
- (3) Water closets and lavatories shall be in conformance with the regulations set forth in the New Jersey Uniform Construction Code, N.J.A.C. 5:23.
- (4) If bathing, dressing and locker facilities are provided for the patrons and male and female patrons are served simultaneously, separate bathing, dressing, locker and massage room facilities shall be provided.
- (5) The premises shall have adequate equipment for disinfecting nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.
- (6) Adequate handwashing facilities shall be conveniently located to each treatment area to maintain clean hands and arms of all employees before, after and during treatment.
- (7) Hand sinks shall be provided with hot and cold water capable of delivering running water under pressure at a temperature of 90° F. to 110° F.

SECTION 2

Sections 201-8 of the Code of the Borough of Eatontown (“Borough Code”) shall be amended as follows (additions are underlined; deletions are [bracketed]):

201-8 Or Suspension Revocation of license or certificate.

A. Licenses and certificates issued under this chapter may be revoked **or suspended**, after notice and a hearing. [for any of the following causes:]

a. Licenses may be suspended or revoked for the following causes:

- (1) Fraud, misrepresentation or false statement in the application for the license.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the licensed business in the Borough.
- (3) If the Chief of Police, Health Officer or their designee is denied access to the premises for the purpose of conducting an inspection.
- (4) Any violation of this chapter.
- (5) Conviction of a crime involving moral turpitude, a felony, an offense involving sexual misconduct, keeping or residing in a house of prostitution and any crime involving dishonesty.

- (6) Conducting the licensed business in the Borough in an unlawful manner or in such a manner as to constitute a menace to the health, safety or general welfare of the public.
- (7) Participation in sexual misconduct as defined by this chapter and N.J.A.C. 13:37A-3.5 and/or prostitution or running a house of prostitution as defined by N.J.S.A. 2C:34-1, or promoting sexual misconduct or prostitution.

b. Suspension of licenses or certifications for the above causes shall be subject to the following durations:

(1) First offense – 30-days

(2) Second offense – 60-days

(3) Third offense – 90-days

(4) Fourth offense – Revocation of License

c. The Borough Administrator shall have discretion to revoke a license or certification without regard to the existence of previous offenses, for any violation of (a)(5), (a)(6), or (a)(7) of this sub-section.

B. Notice of hearing for the revocation or suspension of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be given personally or mailed to the licensee at his/her last known address at least five days prior to the date set for the hearing. (See § 201-7.)

C. Such license may, pending revocation or suspension proceedings, be suspended for not more than 10 days by the appropriate department or division if the conduct of the licensee is detrimental to the health, safety and general welfare of the Borough of Eatontown.

D. The Borough Administrator shall serve as hearing officer for any hearing pursuant to this section, with the Borough official presenting his findings and recommendations to the hearing officer. The time period for rendering a decision by the Borough Administrator and the right of appeal and procedure thereof shall be the same as the time period and procedure set forth under § 201-7.

SECTION III-EFFECTIVE DATE

This ordinance shall take effect immediately after its final adoption.

DATE INTRODUCED: September 9, 2020

DATE ADOPTED: October 14, 2020

APPROVED:

ATTEST:

Anthony Talerico, Jr. Mayor

Date:

Julie Martin, Municipal Clerk

Date: