

BOROUGH OF NEW PROVIDENCE
SANITARY STANDARDS
BOARD OF HEALTH
ARTICLE XXXI
MASSAGE ESTABLISHMENTS
ORDINANCE 2012-01

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 333
OF THE CODE OF THE BOROUGH OF NEW PROVIDENCE
SANITARY STANDARDS ENTITLED "MASSAGE ESTABLISHMENTS"

WHEREAS, the Board of Health of the Borough of New Providence, County of Union and State of New Jersey has determined that massage establishments are businesses affecting the public health, safety and general welfare; and

WHEREAS, the Board of Health has determined that there is a need to establish regulations for the control of massage establishments to ensure the public health, safety and general welfare;

NOW THEREFORE BE IT ORDAINED by the Board of Health of the Borough of New Providence, County of Union and State of New Jersey, as follows:

ARTICLE XXXI. MASSAGE ESTABLISHMENTS

§333-187. Definitions

For the purposes of interpretation and enforcement, and unless the context requires otherwise, words and terms used in this chapter shall have the meanings ascribed to them in Article I of the Sanitary Standards or as follows:

MASSAGE

Any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the human body with the hand and/or with the aid of any object or mechanical or electrical apparatus or appliance, with or without any supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments or other similar preparations commonly used in this practice. For purposes of this definition, the use of any aids or processes used or offered as supplementary or incidental to the above, including heat lamps, hot and cold packs, tubs, showers, cabinet bath or steam and dry-heat baths, shall be considered a part of the massage.

MASSAGE-ACCESSORY

A use where massages occur either permanently or temporarily and the area where the massage occurs covers less than 20 percent of the gross floor area of the principal use. The following professions and services shall not be classified as a massage establishment:

- A. Any duly licensed medical physician, surgeon, osteopath, chiropractor, acupuncturist, registered nurse, or other persons licensed by the state while engaging in practices as part of their license.
- B. Any barber, beautician, manicurist, cosmetologist and esthetician who is licensed under the laws of the State of New Jersey while engaging in practices as part of their license. This exception shall include hospitals, nursing homes, sanitariums or any other health facility duly licensed by the State of New Jersey or to accredited high schools, junior colleges, colleges or universities whose coaches and trainers are acting within the scope of their employment.
- C. Shall not apply to physical therapists and trainers of amateur, semi-professional and professional athletes or athletic teams while engaging in their training responsibilities for and with athletes.
- D. Any massage technicians offering massage services to a fully clothed client in public commons areas where the primary use is not a massage establishment (i.e., chair massage services in the courtyard or common areas of a shopping center).

MESSAGE ESTABLISHMENT

Any establishment, by whatever name called, where any person engages in or carries on or permits to be engaged in or carried on any of the activities of massage, as defined in the practice of massage as herein defined, excluding spas and day spas.

MESSAGE THERAPIST, MESSAGE PRACTITIONER, MASSAGIST, MASSEUR AND MASSEUSE

Any person who, for any consideration whatsoever, engages in the practice of massage, as herein defined. Such terms are used interchangeably in this chapter.

RECOGNIZED SCHOOL

A school or institution of learning which has for its purpose the teaching of the theory, practice, method, profession or work of massage, including anatomy, physiology, hygiene and professional ethics, which is approved by the Department of Education or the Department of Health of the State of New Jersey.

SPA/DAY SPA

Commercial establishments that offer a combination of non-medical personal services that may include hair, nail and skin treatments or other services typically found in a beauty shop, and may offer patrons multiple services such as personal hygiene, grooming, relaxation therapy and hydro therapy, and licensed massage therapist as defined by New Jersey General Statutes. Massage as an accessory use (see definition of Massage-Accessory) shall cover less than 20 percent of the gross floor of the principal use.

All other defined terms within Article I, §333-2, Article VI, §333-29, Article XIV, §333-90 and Article XXX, §333-182 shall remain in full force and effect.

§333-188. Exceptions

This chapter shall not apply to any school, hospital, nursing home or sanitarium operating in accordance with the law of the State of New Jersey nor to any person holding a valid certificate or license to practice the healing arts or to practice podiatry, physical therapy, midwifery, nursing, dentistry, dental hygiene or optometry or to engage in the occupation of a barber, hairdresser or cosmetician under the laws of the State of New Jersey, provided that the activities of such person are confined to those for which the certificate or license is granted; nor shall this chapter apply to any person lawfully acting under their supervision or control; nor shall it prohibit the furnishing of assistance in the case of emergency.

§333-189. Applicability; time of compliance.

- A. For massage establishments. The provisions of this chapter shall apply immediately to any massage establishment which is initially opened or which is moved to a different location or which makes physical improvements to its place of business after the effective date of this chapter. The provisions of this chapter shall apply to all massage establishments from the effective date hereof. All existing establishments at the effective date shall comply with all provisions of this chapter within six months from the effective date.
- B. For massage therapy. Any person who is employed as a massage therapist in the Borough as of the effective date of this chapter shall comply with this chapter within six months of the effective date. No other person may administer massage without first obtaining a massage permit.

§333-190. Permit to operate massage establishment required; fee; procedure.

- A. Permit required. No person shall engage in, conduct or carry on or permit to be conducted or carried on, in or upon any premises in the Borough, the operation of a massage establishment without first having obtained a permit to operate a massage establishment from the Health Officer.
- B. Application. All applications for a permit to operate a massage establishment shall be in writing, signed and sworn to by the applicant, and shall set forth:
 - (1) The name and address of each applicant.
 - (2) That the applicant is at least 18 years of age.
 - (3) The proposed place of business and facilities therein.
 - (4) The exact nature of the massage to be administered.

- (5) Such other information as may be necessary in order for the Health Officer to make any determination required by this chapter.
 - (6) Two portrait photographs of the applicant at least two inches by two inches and a complete set of the applicant's fingerprints which shall be taken by the Chief of Police or the Chief's authorized representative. The applicant shall pay, in addition to the fee in Subsection C, whatever processing fee is in effect at the time of the application.
- C. Fee. Each application shall be accompanied by a fee as set forth in §333-8, R(1), which shall not be refundable, to defray the cost of administration.
- D. Issuance.
- (1) The Health Officer shall issue a permit to operate a massage establishment upon finding:
 - (a) All requirements concerning operating and facilities described in this chapter will be complied with as of the effective date of the permit.
 - (b) Compliance with all other statutes, codes or ordinances, including health, zoning, building, fire and safety requirements of the state or the Borough, as of the effective date of the permit.
 - (c) That the nature of the massage administered will not endanger the health or safety of patrons of the massage establishment.
 - (d) That the applicant or any person directly engaged in the operation or management of the massage establishment has not been convicted of a felony, an offense involving unauthorized practice of the healing arts, sexual misconduct with minors, obscenity, keeping or residing in a house of ill fame, solicitation of a lewd or unlawful act, prostitution or pandering and has not had a permit to operate a massage establishment or a massage permit suspended or revoked in this or any other state or that such conviction, suspension or revocation occurred at least five years prior to the date of the application.
 - (2) The applicant shall furnish authorization to the Health Officer and to the Chief of Police, or their authorized representatives, to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualification of the applicant for the permit. The Health Officer and/or the Chief of Police may require, and the applicant shall furnish, any other identification and information necessary to discover the truth of the matter hereinbefore specified as required to be set forth in the application.

§333-191. Massage permit required; fee; procedure.

- A. Permit required. No person shall engage in the practice of massage without first having obtained a massage permit from the Health Officer.
- B. Application. All applications for a massage permit shall be in writing, signed and sworn to by the applicant, and shall set forth:
- (1) The name and address of the applicant.
 - (2) That the applicant is at least 18 years of age.
 - (3) Such other information as may be necessary in order for the Health Officer to make any determination required by this chapter.
 - (4) Two portrait photographs of the applicant at least two inches by two inches and a complete set of the applicant's fingerprints which shall be taken by the Chief of Police or the Chief's authorized representative. The applicant shall pay, in addition to the fee in Subsection D, whatever processing fee is in effect at the time of the application.
- C. Identification. Each applicant shall provide sufficient identification to establish that the applicant is, in fact, the person applying for the permit.
- D. Fee. Each application shall be accompanied by a fee as set forth in §333-8, R(2), which shall not be refundable, to defray the cost of administration.
- E. Issuance.
- (1) The Health Officer shall issue a massage permit upon finding that:
 - (a) The applicant has successfully completed a course of study at a recognized school, as defined in this chapter, or that the applicant, through past experience and training, possesses a sufficient knowledge of the theory, practice, method, profession or work of massage and of anatomy, physiology, hygiene and professional ethics such that the granting of a permit to the applicant would not impair the public health, safety or welfare.
 - (b) The applicant, through past experience or training, has adequate knowledge of anatomy, physiology, personal hygiene, diseases of the skin, communicable diseases and methods of sanitation so as to protect the health or safety of clients of the masseur or masseuse.
 - (c) The applicant has not been convicted of a felony, an offense involving the unauthorized practice of the healing arts, sexual misconduct with minors, obscenity, keeping or residing in a house of ill fame, solicitation of a lewd or unlawful act, prostitution or pandering and has

not had a permit to operate a massage establishment or a massage permit suspended or revoked in this or any other state or that such conviction, suspension or revocation occurred at least five years prior to the date of the application.

- (2) The applicant shall furnish authorization to the Health Officer and to the Chief of Police, or their authorized representatives, to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit. The Health Officer and/or the Chief of Police may require, and the applicant shall furnish, any other identification and information necessary to discover the truth of the matter hereinbefore specified as required to be set forth in the application.

§333-192. Renewal of permits.

- A. A permit to operate a massage establishment and a massage permit shall be valid until 12/31 of the license year for which it is issued, unless revoked or suspended.
- B. Each application for renewal of a permit shall be accompanied by a fee in the amount equal to the fee for a new permit for the current year.
- C. Renewal of a permit shall be based on the criteria stated in §333-190 and the demonstrated performance of the establishment or masseur or masseuse.
- D. If renewal or any permit is denied, the Health Officer shall notify the holder of the permit in writing, no later than 60 days after application for the permit, of the facts and of the specific section or sections of this chapter upon which the Health Officer's determination was made.

§333-193. Transfer of permits

No permit issued pursuant to this chapter shall be transferable as stated in Article I of the Sanitary Standards.

§333-194. Establishment requirements

No permit to operate a massage establishment shall be granted until the Health Officer has established, following inspection, that the establishment complies with each of the following minimum requirements:

- A. All massage services must be carried out in clearly marked rooms within the massage establishment, and such rooms shall provide privacy to the patron while allowing for the capability to inspect all activity within the room for the purpose of determining that the provisions of this chapter are complied with. Such rooms shall be provided with continuous white lighting, sufficient to light the entire room, which shall remain on at all times that such room is in use.

- B. Sinks with hot and cold running water shall be provided in each massage room.
- C. Private dressing rooms shall be provided for each patron and shall not be utilized by more than one person at a time. Such dressing room shall be equipped with a locking device, from the inside, and shall be located so that the patron goes directly from the dressing room to the massage room without passing through any public area of the establishment.
- D. Massage tables shall be provided in each designated massage room and shall be adequate to support the full body length, width and weight of each individual patron served.
- E. Rooms used for toilets, tubs, steam baths and showers shall be waterproofed with approved waterproof materials.

§333-195. Standards for operation.

- A. Every portion of the massage establishment, including appliances and apparatus, shall be clean and in good repair and operated in a sanitary condition.
- B. All employees, including masseurs and masseuses, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas. A separate dressing room for employees of each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.
- C. All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity, which shall be laundered after each use thereof and stored in an approved sanitary manner; provided, however, that appropriate single-service disposal items may be utilized in lieu of sheets and towels. No sheet or towel shall be used by more than one person without being laundered.
- D. Massage tables or pad used on massage tables shall be cleaned after each use.
- E. Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation, and bathtubs shall be thoroughly cleaned after each use.
- F. All facilities, equipment and materials utilized by practitioners of massage shall be in safe and sanitary order and so maintained and operated as to preclude any danger or hazard to patron or practitioner.

- G. No massage therapist affected by any contagious or communicable disease shall practice massage, and massage therapist may be required to present certification to the Health Officer from a licensed physician stating that they have been examined and found to be currently free of contagious or communicable disease.
- H. Massage therapists shall not diagnose or treat classified diseases nor practice spinal or other joint manipulation nor prescribe medicine or drugs.
- I. No massage establishment shall be operated and no massage administered in violation of or in such manner as to promote or encourage violation of any statute or ordinance.
- J. Each permit to operate a massage establishment and each permit of a massage therapist employed therein shall be conspicuously displayed within the establishment.
- K. No massage establishment granted a permit under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture, statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services.
- L. No person shall permit any person under the age of 18 years to enter or remain on the premises of any massage business establishment, as massage therapist, employee or patron, unless such person is accompanied by a parent.
- M. No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage business.
- N. No massage establishment shall be kept open for business on any day between the hours of 11:00 p.m. and 8:00 a.m.
- O. No smoking shall be permitted in any massage room.
- P. Each masseur or masseuse shall wash his/her hands with a bacteriostatic solution immediately before and immediately after rendering massage services to an individual.
- Q. A list of all mechanical or electrical apparatus or appliances and any substance to be applied to the skin shall be given to the Health Officer for approval. No other apparatus, appliance or substance shall be used except as expressly approved by the Health Officer.

- R. All apparatus or appliances or objects used in massage shall be cleansed and disinfected before and after each use.
- S. All disinfectants and cleansing agents used to maintain the premises and equipment in a sanitary manner shall be kept in a clean, closed drawer or cabinet and completely separate from any substance that is to be applied to the skin in performing a massage.
- T. Written procedures.
 - (1) Each establishment shall have, and each masseur and masseuse shall be knowledgeable of, written procedures to cover:
 - (a) The cleansing and sanitizing of appliances, apparatus, shower and toilet facilities and surfaces.
 - (b) The maintenance, proper operation and storage of appliances and equipment.
 - (c) The laundering, sanitizing, storage and use of sheets, towels and other linens.
 - (d) First aid and emergency health care.
 - (e) A list of conditions and causes that would lead the masseur or masseuse to question giving or continuing of a massage. In addition, prior to the giving of a massage, each client shall be questioned as to whether or not they have any condition which may contraindicate the giving of a massage.
 - (2) Such procedures shall be subject to the review and approval of the Health Officer, and masseurs and masseuses shall be tested as to their knowledge and practice of such procedures.

§333-196. Unlawful acts.

A. Acts enumerated.

- (1) It shall be unlawful for any person in a massage establishment to place his or her hands upon, to touch with any part of his or her body, to fondle in any manner or to massage a sexual or genital part of any other person.
- (2) It shall be unlawful for any person in a massage establishment to expose his or sexual or genital parts, or any portion thereof, 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 portions thereof, of any other person.

(3) 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 full opaque covering the sexual or genital parts of his or her body.

- B. Sexual or genital parts shall include the genitals, pubic area, anus and perineum of any persons and the vulva or breasts of a female.
- C. It shall be unlawful for any person owning, operating or managing a massage establishment knowingly to cause, allow or permit in or about such massage establishment any agent, employee or any other person under his or her control or supervision to perform such acts prohibited in Subsections A, B, or C of this section.

§333-197. Administration and enforcement; penalties for offenses.

- A. Enforcement responsibility. The Health Officer and Chief of Police shall be responsible for enforcing the provisions of this chapter and carrying out its intent.
- B. Rules and regulations. The Health Officer and Chief of Police are hereby authorized to make, adopt, revise and amend procedural rules and regulations as deemed necessary to administer the purposes of this chapter and to interpret and implement the provisions of the chapter.
- C. Inspections. The Health Officer and Chief of Police, or their authorized representatives, shall, from time to time and at least once per year, make an inspection of each massage establishment for the purpose of determining that the provisions of this chapter are complied with. Such inspections shall be made at a reasonable time and in a reasonable manner. No permit holder shall fail to allow access to the premises for purpose of inspection or hinder such inspection in any manner.
- D. Notice of violation.
 - (1) Whenever the Health Officer or Chief of Police determines that any establishment fails to meet the requirements set forth in this chapter or in applicable rules and regulations issued pursuant thereto, they may immediately invoke a penalty as provided in Subsection G of this section or may issue to the owner, operator or permit holder a written notice of violation setting forth the alleged failures and date for correction.
 - (2) At the end of the period of time allowed for the correction of any violation, the Health Officer or Chief of Police shall re-inspect the establishment to determine if the violation has been corrected.

- (3) If, upon re-inspection, the violations are determined not to have been corrected, immediate action shall be taken to correct the violations, including but not limited to assessing fines or revoking the permit.

E. Revocation or suspension of permit.

- (1) The Health Officer may revoke or suspend any permit to operate a massage establishment if he/she finds that:
 - (a) The applicant for the permit has made any false or misleading statement in applying for the permit;
 - (b) Any provisions of this chapter are violated or that the holder of the permit, or any agent or employee of the holder, including a massage therapist, has been convicted of any offense as herein defined and the holder has actual or constructive knowledge of the violation or convictions; or
 - (c) The holder of the permit has refused to permit the Health Officer or any other duly authorized officer to make a reasonable inspection of the premises or the operation therein or unduly hinders such inspection.
- (2) The Health Officer may revoke or suspend any massagist permit if he/she finds that:
 - (a) The applicant for the permit has made any false or misleading statement in applying for the permit;
 - (b) The holder of the permit has been convicted of any offense as herein defined; or
 - (c) The holder of the permit has violated any of the provisions of this chapter.
- (3) The Health Officer shall not revoke or suspend any permit issued under this chapter without notifying the holder of the permit, in writing, of the facts and of the specific section or sections of this chapter upon which his/her determination was made and of the holder's right to request a hearing before the Health Officer and to present evidence or argument on all facts or issues involved.

F. Hearings on denial of permit or denial of renewal.

- (1) Any person aggrieved by the denial of a permit to operate a massage establishment or a massage permit or by the denial of renewal of such

permit may request, if done within seven calendar days of such denial, in writing, a hearing before the Health Officer, at which hearing such person shall be afforded the opportunity to present evidence and argument on all the facts or issues involved.

- (2) A request for a hearing shall stay any revocation, suspension or denial of a renewal until such time as a hearing has been held and a decision is rendered thereon; provided, however, that if the Health Officer finds that the public health, safety or welfare imperatively requires an emergency action and incorporates a finding to that effect in the notice, the permit may be summarily suspended, pending a hearing thereon, which hearing shall be promptly instituted and all facts and issues promptly determined.
- (3) The Health Officer shall, upon receiving a request for a hearing under Subsection F(1), schedule a hearing not later than 15 working days from the date of actual receipt of the request and shall notify all parties of the time and place thereon.
- (4) The Health Officer shall render a decision within 10 working days if the date of the hearing held under this section.

G. Penalty.

- (1) Every person, except persons who are specifically exempted by this chapter, whether acting as an individual owner, employee of the owner, operator or employee of operator, or acting as a participant or worker in any way, who gives massages or conducts a massage establishment without first obtaining a permit and paying a permit fee to the Borough or who violates any of the provisions of this chapter shall be punished by a fine not to exceed \$100. Each violation and each day any such violation shall continue shall constitute a separate offense.
- (2) The imposition of any fine hereunder shall not prevent the enforced abatement of any unlawful condition by the Borough, nor shall it prevent the enforcement of other ordinances, regulations or statutes deemed applicable.

INTRODUCED: May 2, 2012
PUBLIC HEARING: June 12, 2012
ADOPTED: June 12, 2012

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

Kevin Lake, Board of Health President

Attest:

Linda Fitzpatrick
Board of Health Secretary