

ORDINANCE NO. 2012-1119
AN ORDINANCE REGULATING MASSAGE ESTABLISHMENTS
AND REPEALING ORDINANCE NO. 2006-1039

BE IT ORDAINED by the Mayor and Council of the Borough of Manville in the County of Somerset and State of New Jersey, as follows:

SECTION 1. Declaration of findings.

It is declared that the business of operating massage establishments, as defined in this chapter, is a business affecting the public health, safety and welfare of the municipality and its residents.

SECTION 2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADVERTISEMENT

Any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media which directly or indirectly induces or attempts to induce any person or entity to purchase or enter into an agreement to purchase services related thereto from a massage establishment or massage therapist.

ELECTRONIC MEDIA

Radio, television and Internet.

EMPLOYEE

Any person other than a massage therapist who renders any service in connection with the operation of a massage business and receives compensation from the operator of the massage establishment or its patrons.

LICENSEE

The operator of a massage establishment.

MASSAGE

Any systems of activity of structured touch which include, but are not limited to, holding, applying pressure, positioning and mobilizing soft tissue of the body by manual technique and use of visual, kinesthetic, auditory and palpating skills to assess the body for purposes of applying therapeutic massage, bodywork or somatic principles. Such application may include, but is not limited to, the use of therapies such as heliotherapy or hydrotherapy, the use of moist hot and cold external applications, external application of herbal or topical preparations not classified as prescription drugs, explaining and describing myofascial movement, self-care and stress management as it relates to massage, bodywork and somatic therapies. Massage, bodywork and somatic therapy practices are designed to affect the energetic system of the body for the purpose of promoting and maintaining the health and well-being of the client. Massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability.

MASSAGE ESTABLISHMENT

Any establishment where any person, firm, association or corporation engages in, carries on or permits to be engaged in or carried on any of the activities mentioned in the definition of massage for compensation of any kind.

MESSAGE THERAPIST

An individual who has taken courses in massage therapy and has received a diploma or certificate of completion in the area of massage therapy from an educational institution offering degrees and/or certifications in massage therapy and who holds a valid certification or license issued by the New Jersey Board of Massage and Bodywork Therapy.

PATRON

Any person who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give other consideration therefor.

PERSON

Any individual, firm, association, corporation or combination of individuals of whatever form or character.

PRINT MEDIA

Newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, signs, business cards, match covers and other similar items, documents or comparable publications, the content of which is disseminated by means of the printed work.

SEXUAL OR GENITAL AREA

Genitals, anus or perineum of any person or the breasts or vulva of a female.

SECTION 3. Licensing of massage establishments.

A. No massage establishment shall operate or provide massage services within the municipality without obtaining a license from the Clerk of the Borough of Manville. The license is specific to massage establishments and is independent of any certificate of occupancy or approval for the use of any premises as a massage establishment.

B. Any person seeking to obtain a license to operate a massage establishment within the municipality must provide the following:

(1) A completed application as provided by the Clerk of the Borough of Manville accompanied by an application fee in the amount of \$250;

(2) The names, addresses, dates of birth and social security numbers for each person having an ownership interest in the massage establishment;

(3) The names, addresses, dates of birth and social security numbers for each massage therapist who will provide massage services for the massage establishment;

(4) A copy of a valid certification or license issued by the New Jersey Board of Massage and Bodywork Therapy for each massage therapist who will provide massage services for the massage establishment;

(5) A copy of a driver's license, passport or other government-issued photograph identification for each person having an ownership interest in the massage establishment. The copy shall be in color and of such quality so that the owner is readily identifiable from the photograph;

(6) A copy of a driver's license, passport or other government-issued photograph identification for each massage therapist providing massage services for the massage establishment. The copy shall be in color and of such quality so that the massage therapist is readily identifiable from the photograph;

(7) A current photograph and fingerprinting from the Borough of Manville Police Department or its designee for each person having an ownership interest in the massage establishment together with a check made payable to the New Jersey State Bureau of Investigation to cover the cost of a criminal background investigation on each person having an ownership interest in the massage establishment. This shall be a one time requirement, unless there is a change in ownership interest;

(8) Proof of comprehensive general liability insurance in the minimum amount of \$1,000,000 per occurrence and professional liability insurance in the minimum amount of \$1,000,000; and

(9) Satisfactory proof all applicable building, zoning, health and fire code requirements have been met and inspection certificates issued.

C. Every massage establishment license issued pursuant to this chapter shall expire at the end of the calendar year, unless sooner suspended or revoked, and shall be renewed upon compliance with the licensure requirements above, except that the renewal fee shall be \$100 annually. Licensees shall submit an application for renewal no later than October 31 of the year prior to that requested on the application. Those failing to submit a timely renewal application shall be required to reapply as and be subject to the conditions and fees of an initial applicant.

SECTION 4. Investigation.

A. When the application is properly completed and signed by the applicant, the original, duplicate and applicable fees shall be filed with the Borough Clerk. The Clerk shall refer the duplicate to the Chief of Police, who shall make or cause to be made an investigation and criminal background check of each person having an ownership interest in the massage establishment and of each massage therapist providing massage services for the massage establishment.

B. Upon completion of the criminal background investigation, the Chief of Police shall endorse the application noting approval or disapproval and forward the application to the Borough Clerk with supporting information. Disapproval by the Chief of Police shall be based on information disclosed by the investigation and criminal background check that indicates the issuance of the license would not be in the best interest of the public.

C. Upon approval by the Chief of Police, the Borough Clerk shall forward the application to the applicable Borough departments to verify that all building, zoning, health and fire code requirements have been met.

D. If the Chief of Police approves the application and the Borough Clerk has determined that the remaining requirements are satisfied, the Borough Clerk shall cause said license to be issued.

E. The massage establishment shall immediately notify the Borough Clerk of any change in ownership interest or any change in massage therapists performing massage services at the massage establishment.

The information set forth in Section 3 above shall be provided for each new owner or massage therapist.

The Borough Clerk shall forward the information to the Chief of Police for investigation and criminal background check. No massage establishment shall permit a massage therapist to perform massage services at the massage establishment until the information set forth in Section 3 is provided to the Borough Clerk.

SECTION 5. Display of licenses.

A. Every massage establishment shall display in a conspicuous place so as to be readily seen by persons entering the premises a valid massage establishment license issued by the municipality.

B. Every massage establishment shall maintain on file for inspection a valid certification or license issued by the New Jersey Board of Massage and Bodywork Therapy for each massage therapist providing massage services at the premises. The file shall also contain a copy of a driver's license, passport or other government issued photograph identification for each massage therapist providing massage services at the premises. The copy shall be in color and of such quality so that the massage therapist is readily identifiable from the photograph.

SECTION 6. Operating requirements.

A. Price rates for all services offered by the massage establishment shall be prominently posted in the reception area. No services shall be offered or provided by the massage establishment or massage therapist unless specifically posted in accordance herewith.

B. All employees, including persons performing a massage, shall wear nontransparent outer garments, covering the sexual and genital areas.

C. The sexual or genital area of patrons must be covered by towels or cloths or undergarments when in the presence of an employee or massage therapist.

D. No employee or patron shall touch or fondle, or offer to touch or fondle, in any manner the sexual or genital area of any person.

E. Hours of operation shall be limited to between 8:00 a.m. and 9:00 p.m.

F. Every massage establishment and massage therapist shall comply with the infection control precautions currently set forth at N.J.A.C. 13:37-16.8 and as may be amended.

G. Every massage establishment and massage therapist shall comply with the sexual misconduct provisions currently set forth at N.J.A.C. 13:37-16.12 and as may be amended.

H. Every massage establishment and massage therapist shall comply with the recordkeeping requirements currently set forth at N.J.A.C. 13:37-16.14 and as may be amended.

SECTION 7. Advertising and solicitation practices.

A. No person shall advertise or offer to provide massage-related services for compensation within the Borough of Manville unless licensed as a massage establishment pursuant to this chapter.

B. All advertisements for massage services to be provided within the Borough of Manville shall include the massage establishment's name, address and telephone number.

SECTION 8. Change of location.

Once a license has been issued, any change in the location of the massage establishment premises shall be on notice and approval of the Borough Clerk. A change of location fee in the amount of \$100 shall be paid to the Borough.

SECTION 9. Employees.

It shall be the responsibility of the owners of the massage establishment and the holder of the license for the massage establishment to ensure that all persons and massage therapists comply with the provisions of this chapter.

SECTION 10. Inspections.

The Borough Police Department, Board of Health, Fire Department and Code Officer may make inspections of any and all parts of the massage establishment to ensure compliance with the provisions of this chapter, the Borough Code, and laws and administrative codes of the State of New Jersey.

Section 11. Revocation of license.

A. The Borough Clerk may revoke the license of a massage establishment for any of the following reasons:

(1)The massage establishment violates or fails to comply with any provisions of this chapter, the Borough Code, or laws and administrative codes of the State of New Jersey;

(2)Any person or massage therapist employed by the massage establishment violates or fails to comply with any provisions of this chapter, the Borough Code, or laws and administrative codes of the State of New Jersey;

(3)Anyone with an ownership interest in the massage establishment is convicted of a criminal or quasi-criminal offense related to the massage establishment business or any sex-related offense;

(4)Any person or massage therapist employed by the massage establishment is convicted of a criminal or quasi-criminal offense related to the massage establishment business or any sex-related offense;

(5)The massage establishment is engaged in the practice of massage under a false or assumed name, or is using the name of a licensed massage therapist not associated with the massage establishment; and

(6)The massage establishment employs or permits any person without a valid certification or license from the New Jersey Board of Massage and Bodywork Therapy to provide massage services for the massage establishment.

B. The Borough Clerk shall cause a notice of license revocation, to be issued to the licensee at the licensee's most recent address on file, that the license has been revoked. Within 10 days of the delivery of said notice, the applicant may appeal to the Borough Council to reinstate the license. The Borough Council shall hold a hearing. Once the ten-day appeal period has passed, or if upon appeal to the Borough Council the license revocation is upheld, the massage establishment or individual will be barred from providing massage services within the Borough for a period of five years.

SECTION 12. License renewal.

A. The annual renewal fee of \$100 and application for a massage establishment shall be submitted to the Borough Clerk by October 31 of the current year.

B. From the date of original issuance, each licensee shall be subject to periodic criminal background investigations by the Police Department.

SECTION 13. Violations and penalties.

Any person who shall violate any of the provisions of this chapter shall, upon conviction, be fined a minimum of \$500 and a maximum of \$2,000, and may be imprisoned for up to 90 days in jail and/or a period of community service not to exceed 90 days for each offense. Each and every day upon which a violation of any provision of this ordinance exists shall constitute a separate violation.

SECTION 14. Exemptions.

A. The requirements of this chapter shall have no application and effect upon any physician, surgeon, chiropractor, osteopath, nurse, nurse practitioner, physician's assistant, or physical therapist duly licensed to practice such professions in this state.

B. The requirements of this chapter shall not apply to any school certified to teach massage by the New Jersey Department of Education.

SECTION 15. Repealer.

This Ordinance repeals in its entirety Ordinance No. 2006-1039.

SECTION 16. Construction.

Where consistent with the context in which used in this ordinance, words importing the singular shall include the plural; words importing the plural shall include the singular; and words importing one gender shall include all other genders.

SECTION 17. Inconsistency.

Should any provision of this ordinance be inconsistent with the provisions of any prior ordinances, the inconsistent provisions of said prior ordinances are hereby repealed, but only to the extent of such inconsistencies.

SECTION 18. Severability.

In the event that any provision of this ordinance or the application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other provision or application of this ordinance which may be given effect and, to realize this intent, the provisions and applications of this ordinance are declared to be severable.

SECTION 19. Purpose of Captions.

Captions contained in this ordinance have been inserted only for the purpose of facilitating reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

SECTION 20. Effective Date.

This ordinance shall be effective upon final adoption, approval and publication in accordance with law.

STATEMENT OF PURPOSE

The purpose of this Ordinance is to regulate massage establishments within the Borough of Manville and to be consistent with state law.

Borough of Manville,

Angelo Corradino, Mayor

ATTEST:

Philip E. Petrone, Clerk

ORDINANCE #2012-1119

FIRST READING:

Introduced	Seconded	Council	Yes	No	Abstain	Absent
		ASHER	√			
		KOMOROSKI	√			
√		LYNN	√			
		ONDERKO	√			
	√	PETZINGER	√			
		SZABO	√			
		MAYOR CORRADINO				

PASSED this 9th day of July, 2012

Philip E. Petrone

Attest:

Philip E. Petrone, Borough Clerk

SECOND READING:

Introduced	Seconded	Council	Yes	No	Abstain	Absent
√		ASHER	√			
		KOMOROSKI				√
		LYNN				√
		ONDERKO	√			
		PETZINGER				√
	√	SZABO	√			
		MAYOR CORRADINO				

PASSED this 9th day of July, 2012

Philip E. Petrone

Attest:

Philip E. Petrone, Clerk