

**BOROUGH OF BERGENFIELD
PUBLIC NOTICE**

ORDINANCE 18-2530 – AN ORDINANCE AMENDING CHAPTER 208 OF THE CODE OF THE BOROUGH OF BERGENFIELD ENTITLED “MASSAGE THERAPY”

was introduced at a Regular Meeting of the Mayor and Council of the Borough of Bergenfield, in the County of Bergen, New Jersey, held on Tuesday, July 17, 2018 and will be further considered for final passage after public hearing at a meeting of the Mayor and Council to be held in the Council Chambers, Bergenfield Municipal Center, 198 North Washington Avenue, Bergenfield, New Jersey on Tuesday, August 21, 2018 at 8:00 p.m. prevailing time, or as soon thereafter as the matter can be heard.

A clear and concise statement is to establish all regulations regarding Massage Therapy within the Borough of Bergenfield as set forth in the ordinance.

A copy of this ordinance may be obtained without cost between the hours of 8:30 a.m. and 4:30 p.m. at the office of the Borough Clerk, 198 North Washington Avenue, Bergenfield, New Jersey.

Hilda Tavitian, RMC
Deputy Borough Clerk

BOROUGH OF BERGENFIELD
Ordinance No. 18-2530

AN ORDINANCE AMENDING CHAPTER 208 OF THE CODE OF THE BOROUGH OF BERGENFIELD, ENTITLED "MASSAGE THERAPY"

WHEREAS, Chapter 208 of the Code of the Borough of Bergenfield sets forth all regulations regarding Massage Therapy within the Borough of Bergenfield; and,

BE IT ORDAINED, by the Mayor and Council of the Borough of Bergenfield, County of Bergen and State of New Jersey that Chapter 208 entitled Massage Therapy is hereby amended as follows:

Chapter 208 entitled Establishment of Rules and Regulations for Massage Parlors.

208-1. Conditional Uses

A. Purpose.

To regulate establishments that have as their primary purpose as a massage business, as defined below, shall be a permitted conditional use in the B-1 Zone and are expressly subject to the conditions as set forth in said area and shall not be permitted as a primary use in any other zone of the Borough of Bergenfield.

B. Definitions.

MASSAGE BODYWORK AND SOMATIC THERAPY

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 applications may include, but are 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, movement and neuromyofacial education and education in self-care and stress management. Massage, bodywork and somatic therapies do not include the diagnosis and treatment of illness, disease, impairment or disability.

MASSAGE BUSINESS(ES)

Any establishment located in a fixed place of business on a nonresidential property owned, leased, operated or controlled by any person, firm, association or corporation which engages in or carries on, or permits to be engaged in or carried on, any of the massage activities defined in this chapter. This includes any establishment engaged in or carrying on or permitting any combination of a massage, bodywork, pressure and/or somatic therapy and bathroom establishment.

MASSAGE, BODYWORK AND SOMATIC THERAPIST

Any person licensed pursuant to the provisions of the Massage and Bodywork Therapist Licensing Act, N.J.S.A. 45:11-53.

MASSAGE, BODYWORK AND SOMATIC THERAPY ESTABLISHMENT

Any establishment wherein massage, bodywork and/or somatic therapies are administered or are permitted to be administered, when such therapies are administered for any form of consideration.

MASSAGE WORK AREA

Any room, floor or section of a massage business where massage, bodywork, pressure and/or somatic therapies as herein defined are carried out.

PERSON

Any individual, firm, member of a firm, partnership, member of a partnership, corporation or any officer, director or stockholder of such corporation, a voluntary association or incorporated association. "Persons" shall specifically include and apply to individual owners or massage businesses, as well as the entity(ies).

C. Location, parking and approval.

- (1) The premises in question must be located in the B-1 Zone.
- (2) The lot must not be located within 100 feet of a church and/or house of worship.
- (3) The lot must not be within 100 feet of a day care center.
- (4) The lot must not be within 100 feet of a school.
- (5) The premises and all other structures lawfully thereon must in all other respects comply with the zoning requirements for the B-1 District, as established by the Zoning Ordinance of the Borough of Bergenfield, except that the parking requirements shall be determined in accordance with the Zoning Ordinance of the Borough of Bergenfield, as made applicable to the use of retail store or shop, personal service establishment as set forth therein.
- (6) The premises devoted to the massage parlor shop shall not exceed 2,500 square feet in area.
- (7) Site Plan approval must be obtained from the Planning Board, as required.

D. Non-licensed therapist prohibited.

The administering of massage, bodywork and/or somatic therapies of any form or consideration by any person not 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] shall be prohibited in the Borough of Bergenfield.
[1] Editor's Note: See N.J.S.A. 45:11-53 et seq.

E. License required.

(1) Establishment: No person, firm, or corporation shall operate any establishment or utilize any premises in the Borough of Bergenfield as or for a massage, bodywork and somatic therapy establishment unless or until such person, firm or corporation has obtained a license for such establishment or premises from the Borough of Bergenfield Health Department in accordance with the terms and provisions of this subsection. Each applicant shall be responsible, solely at its own cost and expense, to obtain digital fingerprinting through the State Police. Fingerprints so furnished shall become a part of the application. In the event of a partnership, all partners, and in the event of a corporation, the president, vice president, secretary and treasurer, shall be required to submit the abovementioned sets of fingerprints, which fingerprints so taken shall be submitted to the Chief or Police for comparison and record. The number of licenses shall be limited as follows:

(a) The Borough of Bergenfield Health Department shall issue a license to operate upon satisfaction by the applicant that he or she met all the requirements of N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37A-1.1 et seq.

(2) Massage practitioner. No person shall engage in providing massage services unless such person has first obtained a valid massage practitioner license issued by the Borough of Bergenfield Health Department pursuant to the provisions of this chapter and is certified by the State of New Jersey pursuant to N.J.S.A 45:11-53 et seq. and N.J.A.C. 13:37A-1.1 et seq.

(a) The provision of massage services shall be limited to licensed medical centers, hospitals, sanitariums or duly licensed office of a physician, osteopath, chiropractor, physical therapist or the office of a duly licensed massage business, as defined herein.

(b) No person other than a licensed and state-certified massage practitioner shall have any physical contact with patients or persons within the office of said physician, osteopath, chiropractor, physical therapist or massage business.

(c) The Borough of Bergenfield Health Department shall issue a license to practice upon satisfaction by the applicant that he or she has met all the requirements of N.J.S.A. 45:11-53 et seq. and N.J.A.C.13:37A-1.1 et seq.

F. Licensing Fee.

- (1) Every applicant for a massage practitioner license and/or a massage business license pursuant to this chapter shall file annually a complete application with the Borough of Bergenfield Health Department as set forth in this chapter and pay an annual filing fee as follows:
 - (a) For a massage business license pursuant to this chapter, the fee shall be \$250.
 - (b) For each massage practitioner licensed pursuant to this chapter, the fee shall be \$100.
 - (c) All fees are nonrefundable. Fees are annual.
 - (d) Any changes in ownership shall require a new application and license with the payment of the fees thereof.
- (2) If at any time after the initial license is granted additional practitioners begin providing services at any massage business, all of the information required herein must be submitted to the Borough of Bergenfield Health Department prior to the massage practitioner providing services and the addition fee of \$100 must be paid.
- (3) In addition to the above, each massage practitioner and massage business applicant must pay the fee required to obtain a criminal background check.

G. Renewals.

- (1) All licenses shall be valid for a period of one (1) year from the date of issuance.
- (2) Licensees may renew their licenses prior to the expiration by filing a new application with the Borough Clerk in a manner prescribed in this subsection and accompanied by the requisite fee.

H. Application for license.

Any person desiring a massage, bodywork and somatic therapy establishment license shall file a written application with the Health Department upon a form provided by the Health Department. 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 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 names and residence address of the manager or other person principally in charge of the operation of the business, which shall be updated for each new employee.
- (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 State of New Jersey pursuant to the Massage and bodywork Therapist Licensing Act, P.L. 1999, c. 19, amended 2007, c. 337.
- (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 address and residence telephone number.
 - (b) The two previous address immediately prior to the present address of the applicant.
 - (c) Written proof of age.
 - (d) Height, weight, sex, color of hair and eyes.
 - (e) Two front-face portrait photographs taken within 30 days of the date of the application and at least two inches by two inches in size.
 - (f) Provide 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 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) All criminal convictions other than misdemeanor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and circumstances thereof. The applicant shall execute a waiver and consent to allow a criminal background check by the Borough Police Department. Failure to execute such a waiver and consent shall result in a denial of a license.

- (h) The names and addresses of three adult residents who will serve as character references. These references must be persons other than relatives and business associates.
- (i) The fingerprints of the applicant(s).

I. Transferability.

No license issued pursuant to this chapter is transferable, separate or divisible.

J. Operating Requirements.

Every massage, bodywork, and somatic therapy establishment shall comply with the following:

- (1) Every portion of the mass age, bodywork, and somatic therapy establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition. A broad spectrum antimicrobial disinfectant shall be used.
- (2) Price rates for all services shall be prominently posted (Brochures or price list) in the reception area in a location available to all prospective customers.
- (3) All employees, including massage, bodywork and somatic therapists, shall be clean and wear clean, nontransparent outer garments. Dressing rooms must be available on the premises. Doors to such dressing rooms shall open inward, be self-closing, and be non-lockable.
- (4) The hand wash sink shall be used solely for the washing of hands, arms and other parts of the body.
- (5) Hand sinks shall be supplied with liquid soap and disposable hand towels at all times.
- (6) Every area of the establishment shall be provided with lighting capable of providing a minimum of 50 footcandles of artificial light. Lighting may be dimmed during treatment sessions.
- (7) Massage tables shall be maintained in good condition and free rips and tears.
- (8) Toilet paper, covered trash, liquid hand soap and disposable towels or alternate means of hand drying shall be provided in restrooms.
- (9) All massage, bodywork and somatic therapy establishments shall be provided with clean laundered sheets and towels in sufficient quantity which shall be laundered after each use thereof and stored in a sanitary manner.

- (10) Soiled linens and draping materials shall be either commercially laundered or washed on site in a clothes-washing machine, in hot water with detergent and at least one cup of bleach or an antibacterial agent, and dried on the high-heat setting in a close dryer.
- (11) Linens used in a licensed establishment may not be laundered in a private home.
- (12) Closed containers shall be provided for soiled linens.
- (13) The sexual or genital area of patrons must be covered by towels, cloths or undergarments when in the presence of an employee or massage, bodywork or somatic therapist.
- (14) It shall be unlawful for any person knowingly, in a massage, bodywork and somatic therapy establishment, to place his or her hand upon or touch with any part of his or her body, to fondle in any manner or to massage a sexual or genital area of any other person. No massage, bodywork and somatic therapist, employee or operator shall perform or offer to perform any act which would require the touching of the patron's sexual or genital area.
- (15) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat-rooms, steam and vapor rooms or steam or vapor cabinets and shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and showers shall be thoroughly cleaned after each use. When carpeting is used on floors, it shall be kept dry.
- (16) Oils, creams, lotions and other preparations used in administering massage, bodywork and somatic therapies shall be kept in clean closed containers or cabinets.
- (17) Animals, except Seeing Eye dogs, shall not be permitted in the massage work area.
- (18) Each massage, bodywork and somatic therapist shall wash his or her hands in hot running water, using proper soap or disinfectant before administering a massage.
- (19) Hours of operation – No such business shall begin operations before 9: a.m. or continue after 9:00 p.m.

K. Minors prohibited; exception.

No person shall permit any person under the age of 18 years to receive a massage without advanced written permission from his or her parent, caregiver or guardian or

unless a parent, caregiver or guardian are present in the room during the time of the massage.

L. Maintenance of register required.

All massage business licensees must maintain a register of all persons employed as massage, bodywork and somatic therapists and their license numbers and all other employees and agents. Such register shall include the name, address, date of birth and social security number of all massage, bodywork and somatic therapists, employees and agents and shall be available for inspection at all times during regular business hours.

M. Responsibilities of licensee.

The licensee shall be responsible for all actions which occur in the premises of the massage business, whether by massage, bodywork and somatic therapists, employees, subcontractors or other agents, where the licensee has actual or constructive knowledge of such actions.

N. Inspections.

The Borough of Bergenfield Health Department, Borough of Bergenfield Police Department, Borough of Bergenfield Construction Department and the Borough of Bergenfield Fire Department shall, from time to time, announced or unannounced, make an inspection of each massage business for the purpose of determining whether the provisions of this chapter are complied with. Such inspections shall be made as reasonable times and in a reasonable manner and in compliance with this chapter. It shall be unlawful and grounds for a suspension and/or revocation of the license for any licensee to fail to allow such inspection officer access to the premises or to hinder such officer in any manner.

O. Posting of license required.

All licenses issued hereunder shall be exhibited in a conspicuous location at all times.

P. Violations and penalties.

The Borough of Bergenfield may, in lieu of revocation, impose a fine or suspend a license issued pursuant to this chapter. Any person, as defined above, who shall violate any of the provisions contained in this chapter shall be subject to a fine not to exceed \$1,000 or to be imprisoned for a period not to exceed 90 days, or both, for each and every offense. Each separate day that the provisions of this chapter are violated by any person, as defined above, shall constitute a separate and distinct offense and violation of this chapter.

Q. Existing establishments and practitioners.

All massage businesses and/or massage, bodywork and somatic therapists who presently engage in the business of massage must comply with the provisions of this chapter within 30 days of the effective date of this chapter.

R. Revocation of licenses or permits.

A violation of the provisions of this chapter shall constitute grounds for the revocation of any license, permit or certificate issued by the Borough relating to the premises in question.

S. Living quarters.

No part of a massage business licensed pursuant to this chapter shall be occupied or used or furnished for sleeping quarters and/or living quarters.

T. Appeals.

In the event that any applicant for a license shall have been refused a license or in the event that any licensee shall have had his license revoked or suspended, said person shall have the right and privilege to appeal from such refusal to grant a license or suspension or revocation of a license to the Mayor and Council of the Borough of Bergenfield; provided, however, that not less than five days written notice of such appeal shall have been served upon the Mayor and Council, either in person or by registered mail, return receipt requested, and a date of hearing before the Mayor and Council shall be fixed no later than 30 days after the receipt of said notice of appeal. Thereupon, the Mayor and Council shall notify said person of the place, date and time of hearing.

All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to that section, subdivision, clause or provision so adjudged and the remainder of this ordinance shall be deemed to be valid and effective.

This ordinance shall take effect immediately upon passage and publication in accordance with law.

Introduced: July 17, 2018

Adopted:

Approved: _____

Norman Schmelz, Mayor

Attest: _____

Marie Quinones
Borough Clerk