

Ordinance 2016-13

*BOROUGH OF HIGHTSTOWN
COUNTY OF MERCER
STATE OF NEW JERSEY*

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 4, ENTITLED “LICENSING”, OF THE “REVISED GENERAL ORDINANCES OF THE BOROUGH OF HIGHTSTOWN, NEW JERSEY.”

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF HIGHTSTOWN, IN THE COUNTY OF MERCER, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1: The following regulations shall be added to the Borough Code regarding the licensing of Massage Parlors in the Borough of Hightstown:

DEFINITIONS:

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

Massage, Bodywork and Somatic Therapies

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 or treatment of illness, disease, impairment or disability.

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.

NONLICENSED THERAPISTS PROHIBITED

The administering of massage, bodywork and/or somatic therapies for any form of 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. shall be prohibited throughout the Borough of Hightstown.

LICENSE REQUIRED

Establishment: No person, firm or corporation shall operate any establishment or utilize any premises in the Borough of Hightstown 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 Municipal Clerk in accordance with the terms and provisions of this chapter.

RENEWALS

- A. All licenses shall be valid for a period of three years from the date of issuance.
- B. Licensees may renew their licenses prior to expiration by filing a new application with the Municipal Clerk in the manner prescribed in this chapter accompanied by the requisite fee.

APPLICATIONS FOR LICENSE

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

- A. The type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise.
- B. The name, style and designation under which the business is to be conducted.
- C. The business address and all telephone numbers, including facsimile, where business is to be conducted.
- D. 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 manger or other person principally in charge of the operation of the business.
- E. 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.
- F. 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:
 1. The name, complete residence address and residence telephone number.
 2. The two previous addresses immediately prior to the present address of the applicant.
 3. Written proof of age.
 4. Height, weight, sex, color of hair and eyes
 5. 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
 6. 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.
 7. 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 Division. Failure to execute such a waiver and consent shall result in a denial of a license.

8. 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.
 9. The fingerprints of the applicant(s).
- G. At the time the application is filed, a fee as established in Chapter 82, Fees, shall be paid to the Borough Clerk to cover the cost of processing the application and investigating the facts stated therein.

INSPECTION REQUIREMENTS.

- A. The Municipal Clerk, upon receiving an application for a massage, bodywork and somatic therapy establishment license, shall refer the application to the various municipal departments (Division of Code Enforcement, Zoning, Health) 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 unless inspections by the appropriate municipal 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 Hightstown. 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 with 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 non-disposable instruments and materials used in administering massages. Such non-disposable instruments and materials shall be disinfected after use on each patron.
 6. Adequate hand washing facilities shall be conveniently located to each treatment area to maintain clean hands and arms of all employees before, after and during treatments.
 7. Hand sinks shall be provided with hot and cold water capable of delivering running water under pressure at a temperature of 90 to 110 F.

INVESTIGATION; ISSUANCE OF LICENSE.

- A. When said application is properly filled out, signed by the applicant and has been filed with the Municipal Clerk with all accompanying information, the application shall be referred by the Clerk to the Borough Police Division. The Chief of Police or his or her designee shall investigate the information available as to the applicant's business and good moral character of the applicant as deemed necessary for the protections of the public health, welfare and safety.
- B. If as a result of such investigation the applicant's character or business responsibility is found to be unsatisfactory or that the issuance of a license to the applicant would present a danger to the public health, welfare or safety, the Chief of Police shall endorse on such application his/her disapproval and reasons for same and return the application to the Borough Clerk, who shall notify the applicant that the application is disapproved.
- C. If as a result of such investigation the character and business responsibility of the applicant are found to be satisfactory and the issuance of the license to the applicant will present no danger to the public health, safety and welfare, the Chief of Police shall indicate his/her approval on the application and return the application to the Borough Clerk, who shall execute and deliver to the applicant the license.

REVOCATION OF LICENSE

- A. Licenses issued under this chapter may be revoked by the Chief of Police, after notice and a hearing, for any of 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 and 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.
- B. Notice of the hearing for the revocation 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.
- C. Such license may, pending revocation proceedings, be suspended for not more than 10 days by the Chief of Police if, in his/her opinion, the conduct of the licensee is detrimental to the health, safety and general welfare of the Borough of Hightstown.
- D. The Chief of Police shall serve as hearing officer for any hearing pursuant to this subsection.

CRITERIA FOR IMMEDIATE CLOSURE

The licenses issued under this chapter may be immediately suspended by the Chief of Police for the following reasons:

- A. Massage, bodywork or somatic therapy is provided by an unlicensed therapist.
- B. Unsanitary or unsafe conditions which may adversely impact the health and/or safety of the public.

DISPLAY OF LICENSE

The massage, bodywork and somatic therapy establishment shall display its license as well as the New Jersey license of each and every massage, bodywork and somatic therapist employed in the establishment in an open and conspicuous place on the premises of the establishment.

OPERATING REQUIREMENTS

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

- A. Every portion of the massage, 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.
- B. 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.
- C. 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.
- D. The handwash sink shall be used solely for the washing of hands, arms and other parts of the body.
- E. Handsinks shall be supplied with liquid soap and disposable hand towels at all times.

- F. Every area of the establishment shall be provided with lighting capable of providing a minimum of 50 foot candles of artificial light. Lighting may be dimmed during treatment sessions.
- G. Massage tables shall be maintained in good condition and free of rips or tears
- H. Toilet paper, covered trash, liquid hand soap and disposable paper towels or alternate means of hand drying shall be provided in restrooms.
- I. 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.
- J. 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 clothes dryer.
- K. Linens used in a licensed establishment may not be laundered in a private home.
- L. Closed containers shall be provided for soiled lines.
- M. 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.
- N. 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.
- O. All walls, ceilings, floors, pools, showers, bathtubs, steamrooms and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat-rooms, steam or 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 the floors, it shall be kept dry.
- P. Oils, creams, lotions and other preparations used in administering massage, bodywork and somatic therapies shall be kept in clean closed containers or cabinets.
- Q. Animals, except for Seeing Eye Dogs, shall not be permitted in the massage work area.
- R. Each massage, bodywork and somatic therapist shall wash his or her hands in hot running water, using a proper soap or disinfectant before administering a massage.

INSPECTIONS BY POLICE DIVISION OR HEALTH DEPARTMENT

- A. The Chief of Police and Health Officer and/or their designees are authorized to conduct random inspections of massage, bodywork and somatic therapy establishments granted a permit under the provisions of this chapter for the purpose of determining whether the provisions of this chapter are being complied with. Such inspections shall be unannounced but shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any licensee or employee of the licensee to fail to allow such inspection officer access to the premises or to hinder such officer in any manner.
- B. The operator shall permit access to all parts of the establishment and all pertinent records required for the inspection shall be made available to the health authority representative for review.

SLEEPING QUARTERS

No part of any quarters of any massage, bodywork and somatic therapy establishment shall be used for or connected with any bedroom or sleeping quarters nor may any person sleep in such massage, bodywork and somatic therapy establishment except for limited periods incidental to and directly related to a massage, bodywork or somatic therapy treatment or bath. This provision shall not preclude the location of massage, bodywork and somatic therapy establishment in separate quarters of a building housing a hotel or other separate businesses or clubs.

PROHIBITED ACTS.

- A. No owner or manager of a massage, bodywork and somatic therapy establishment shall tolerate in his or her establishment any activity or behavior prohibited by the laws of the State of New Jersey, particularly, but not limited to, laws proscribing prostitution, indecency and obscenity, including the sale, uttering or exposing and public communication of obscene material; laws which relate to the commission of sodomy, adultery and proscribing fornication, nor shall any owner or manager tolerate in his or her establishment any activity or behavior which violates this chapter.
- B. Any conviction of any employee of a massage, bodywork and somatic therapy establishment of a violation of the aforementioned statutes and codes may devolve upon the owner or manager of such establishment, it being specifically declared that following such conviction of an employee, the owner or manager of the establishment may be prosecuted as an accessory to such violation and the licenses which have been issued may be automatically revoked.

EXCEPTIONS

The provisions of this chapter shall not apply to massage, bodywork or somatic therapies given:

- A. In the office of licensed physician, chiropractor or physical therapist; or
- B. By a regularly established medical center, hospital or sanitarium having a staff which includes licensed physicians, chiropractors and/or physical therapists; or
- C. By any licensed physician, chiropractor or physical therapists in the residence of his or her patient; or
- D. By a licensed barber or cosmetologist/hairstylist limited to the areas of the face, neck, scalp or upper part of the body as set forth in the Cosmetology and Hairstyling Act of 1984, N.J.S.A. 45:5B-1 et seq.

VIOLATIONS AND PENALTIES

In addition to the revocation or suspension of the license granted under this chapter, any person violating any provision of this chapter shall be subject to a penalty in the amount of \$2,500.00 per offense.

RELICENSING AFTER REVOCATION

- A. Any person whose license has been revoked under the provisions of 109-8 may apply to be relicensed upon filing of proof that all loss caused by the actor or omissions for which the license was revoked had been fully satisfied and that all conditions imposed by the decision of the revocation have been complied with
- B. Payment of a registration fee in the amount of \$500.00 is applicable to the initial licensing and each renewal thereafter..

SERVICE OF NOTICES

Whenever notice is required or permitted to be given by this chapter, such notice may be effected by personal service upon the licensee if an individual or any general partner, if a partnership, or upon any corporate officer, if a corporation, or alternatively, to any of foregoing, by certified mail, return receipt requested, to the last address listed in the Borough's Clerk's office in conjunction with the license information. It shall be the duty of each licensee to keep the Borough advised of any subsequent change of address. Upon failure of a licensee to comply with this requirement, any notice returned with the notation "unknown," "moved," or "not claimed" shall be deemed proper service of all notices required by this chapter.

Section 2. Severability. If any sentence, paragraph or section of this Ordinance, or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any sentence, paragraph or section of this Ordinance shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this Ordinance.

Section 3. Effective Date. This Ordinance shall become effective immediately upon final passage and publication in accordance with the law.

Section 4. Repealer. All other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Introduced:

Adopted:

ATTEST:

Debra L. Sopronyi
Municipal Clerk

Lawrence D. Quattrone
Mayor