

O-17-14  
03/15/17

**AN ORDINANCE AMENDING AND SUPPLEMENTING THE GENERAL ORDINANCES OF THE CITY OF BAYONNE, CHAPTER 4, LICENSING, REGISTRATION AND BUSINESS REGULATIONS**

**BE IT ORDAINED**, by the Municipal Council of the City of Bayonne, as follows:

**Section 1.** That the Revised General Ordinances of the City of Bayonne, Chapter 4, Licensing, Registration and Business Regulations, Subsection 4-22, Massage Establishments, is hereby deleted in its entirety and is replaced with:

**4-22 MASSAGE ESTABLISHMENTS.**

**4-22.1 Definitions.**

For the purpose of this section:

a. *Massage* shall mean *massage*, bodywork, pressure and somatic therapy. Those terms shall be used herein as those terms are used in N.J.S.A. 45:11-55 et seq. 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 techniques and use of visual, kinesthetic, auditory and palpating skills to assess the body for purposes of applying therapeutic *massage*, bodywork, pressure 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 application of herbal or topical preparations not classified as prescribed 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 purposes of promoting and maintaining the health and well-being of the client. *Massage*, bodywork, pressure and somatic therapies do not include the practice of medicine, surgery, dentistry, osteopathy, chiropractic, physical therapy or other medical or surgical practices as defined in Title 45, Chapter 9, of New Jersey Statutes Annotated or to licensed nurses acting under the direct prescription and direction of said practitioners. *Massage*, bodywork, pressure and somatic therapies do not include *massage* of the scalp, hands or feet by a hair or nail salon or chair *massage* of arms, neck and shoulders in an open room or area where other business is conducted, or certificated therapeutic methods that are employed when the patron is fully clothed.

b. *Massage Establishment*. Shall mean any establishment located in a fixed place of business on a 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 bathhouse establishment.

c. *Massage Practitioner.* Shall mean any person who holds a certificate as defined by this chapter who, for any consideration whatsoever, engages in the practice of **massage**, bodywork, pressure and/or somatic therapy as herein defined, including but not limited to subcontractors, subtenants or temporary employees certified by the State of New Jersey.

d. *Massage Work Area.* Shall mean any room, floor or section of a **massage** business or establishment where **massage**, bodywork, pressure and/or somatic therapies as herein defined are carried out.

e. *Person.* Shall mean 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 of **massage** businesses, as well as the entity(ies).

#### **4-22.2 Registration Required.**

a. (1) It shall be unlawful to operate any massage establishment in the City of Bayonne without first obtaining a license therefor. The owner of a massage establishment desiring a license shall make written application to the City Clerk setting forth the name of the applicant, location of the places sought to be licensed, whether or not the applicant is registered by the New Jersey State Department of Health and any other facts which the City Clerk may consider pertinent. Said application shall be on a form prescribed by the City Clerk.

(2) It shall be unlawful for any Massage Practitioner or person to engage in the practice of massage, bodywork, pressure and/or somatic therapy as herein defined without first obtaining a license therefore.

(3) Each application for a license or the renewal thereof, or to engage in the business of massage which is submitted to the City Clerk, shall be approved by the Municipal Council before any license is issued. The Municipal Council shall not approve such application unless a valid State License is attached to the application.

b. Conditions for issuance. A license shall not be issued to a business entity, massage establishment, massage practitioner or person unless he/she/it meets the following conditions:

(1) Owners, corporate officers, partners, limited liability members submit a completed application as required by the Ordinance, along with proof of State Licensure to own/operate a massage establishment.

(2) Is at least eighteen (18) years of age.

(3) Is licensed/certified pursuant to N.J.S.A. 45:11-53 et seq. (The Massage, Body Work and Somatic Therapy Certification Act) and regulations promulgated hereto and provides a copy of a valid license/certification issued by the State of New Jersey.

(4) Submits a certification from a duly licensed physician of the State of New Jersey stating that the applicant is free from contagious and communicable disease, dated within thirty (30) days of the date of the application.

(5) Applicant submits three (3) recent photographs that shall be approximately 2 x 2 inches showing the head and shoulders of the applicant in a clear and distinguishing manner. Each applicant shall be fingerprinted by the Chief of Police or his designee and shall undergo a background check by the Chief of Police, which cost shall be borne by the applicant. (If there have been no violations of this chapter and the applicant has been continually licensed from their initial application, fingerprinting shall only be required upon the initial application). The applicant completes an application in a form maintained on file with the City Clerk.

(6) The applicant has not been convicted or pled guilty to violating any provisions of the Criminal Code included in N.J.S.A. 2C: 34-1 et seq. and/or N.J.S.A. 2C: 14-2 or their equivalent in another jurisdiction.

(7) Has not made a false statement in connection with an application for licensure under this Ordinance.

c. Restrictions on location. No application for a new massage establishment license shall be granted unless the establishment is more than one thousand (1,000) feet away from any public or private educational institution (including elementary, high school and/or college level) or house of worship.

d. Compliance; misrepresentation. Any application which fails to conform or to comply with the requirements of this chapter or which contains any misrepresentations shall constitute sufficient grounds for the denial of the application and any license which may be issued with an intentional misrepresentation contained in the application shall be subject to suspension or revocation in addition to penalties hereinafter mentioned.

e. Terms. Each such license shall become effective January 1 of any given year and will be renewable by mail annually.

f. Annual fee. Annual fee is due with application and will be required to be paid January 31 of any given year after. The applicant shall pay a two hundred fifty dollar (\$250.00) fee upon filing an initial application for the operation of a business engaged in providing massage therapy services and any individual applicant (as opposed to a business entity) who wishes to be

licensed for massage therapy purposed under this chapter shall pay an initial application fee of fifty dollars (\$50.00). All licenses shall be valid for a period one (1) year. All provisions of this chapter, including the requirement of filing fees, shall apply to renewals in the same manner as they apply to applications for initial licenses.

- g. Nontransferable. These licenses are not transferable.
- h. Lists of suppliers. Every owner of a massage establishment, upon request of the City's Health Officer, shall furnish to the Health Officer the names and addresses of any person, firm or corporation supplying them with any item that is used in its establishment for the purpose of enabling the Health Officer to examine the sanitary and hygienic conditions under which said materials are handled.
- i. Water supply. Every massage establishment upon request of the Health Officer shall contain hot and cold running water.
- j. Use of linen. It shall be unlawful to wash or dry in the licensed premises any towels that were used or that have come into contact with a patron. It shall be unlawful to use covering cloths on more than one (1) person successively, except when either a clean towel or a paper neck is applied next to the skin between each covering cloth and the skin to prevent contact of the skin with such covering cloth.
- k. Separation of living quarters. No part of the premises used as a massage establishment shall be occupied or used or furnished for sleeping quarters and rooms in the rear or to the side of the premises which may be used as living quarters shall be separated from the massage establishment and/or massage work area by a permanent partition extending from ceiling to floor. And any door leading thereto shall be kept closed at all times except as used for ingress and egress.
- l. Sign stating hours of operation, required. All massage establishments shall have a sign not less than eighteen (18) inches wide by sixteen (16) inches long on which shall be prominently stated the hours of operation. The said sign shall be displayed in such a manner that all persons frequenting the said location shall have an unobstructed view thereof.
- m. Inspections; re-inspection fee. The Health Officer or his/her designee shall enter said premises at any time with no advance warning. The premises must be inspection ready at all times. The Health Officer, Public Health Investigator, Bayonne Police Department are the other authorities that may enter said premises for complaints or general inquiries. All findings will be reported to the Health Officer as soon as possible.

Each massage establishment will be inspected at least one (1) time annually, where a certificate of inspection (pass or fail) will be posted. This

certificate must be posted in clear view of all patrons entering said locations.

At which time an inspection is made and it is found to be of unsatisfactory condition it will put the said location on notice and schedule a re-inspection and a re-inspection fee of forty dollars (\$40.00) will be charged.

n. Licenses must be displayed. All licenses issued by the City Clerk must be posted and available to all patrons entering said location. In locations where there is additional licensing (by the State of New Jersey), all individual licenses of operators and owners must be posted at the said premises and must be valid. (The personal information that is on the license may be blocked out, but must be accessible to the inspecting individual.)

o. Revocation of License. The conviction of any applicant or licensee of any criminal offense, quasi-criminal offense or sanitary code violation related to the licensee's business, or any sex-related offense may constitute a forfeiture of the license and said license shall be deemed revoked. Each licensee shall be deemed responsible for a clean and safe business operation in the massage work area and on the premises. The violation of any law at said premises or any provisions of this chapter may be grounds for the revocation of the license to operate massage therapy on the premises.

p. Revocation Procedure.

(1) Licenses issued under this chapter may be revoked by the City Clerk, Business Administrator, Construction Code Official, Law Director, Health Officer or Chief of Police for violations of any terms or conditions of this chapter.

(2) Notice of an informal hearing for revocation of a license before any of the individuals identified in Subsection 1. above, shall be given in writing setting forth the grounds of complaint and time and place of hearing. Such notice shall be served personally upon the licensee or mailed by registered letter to the licensee at his last known address at least five (5) days prior to the date set for hearing.

(3) In the event of a revocation of license, the City Clerk, Business Administrator, Construction Code Official, Law Director, Health Officer or Chief of Police shall report his/her findings and reasons therefor to the applicant/licensee in writing.

q. Appeals. In the event that any applicant for a license shall have been refused a license or in the event that any license shall have had his/her license revoked or suspended by the Health Officer, said person shall have the right and privilege to appeal from such refusal to grant license or suspension or revocation of license to the Municipal Council provided

however that not less than fourteen (14) days written notice of such appeal shall have been served upon the Municipal Council either in person or registered mail return receipt requested and a date of hearing before the Municipal Council shall be fixed no later than thirty (30) days after the receipt of said notice of appeal. Thereupon the Municipal Council shall notify said person of the place, date and time of hearing.

r. Fines and Violations. In addition to any penalty imposed pursuant to section 4-22.6, if a licensee fails to correct any violation within a time period prescribed by the Health Officer or other authorized City Officer, a license may be revoked until such corrections are made.

s. Reapplication After Revocation Prohibited. No person, business entity, owner, corporate officer, partner, limited liability member, or someone acting in their behalf, after having their license revoked shall be granted a license upon reapplication. The City Clerk shall be prohibited from issuing a license to operate a massage establishment or a license to operate as a massage practitioner under this or any other ordinance of the City of Bayonne to any such revokee. If the applicant for a massage establishment hereunder is a person, this ordinance shall apply to all immediate family members of said person.

#### **4-22.3 Requirements.**

Any person or entity engaged in the business of operating a massage establishment as defined in this section, shall be required to carry a professional liability insurance policy in the minimum amount of ten thousand (\$10,000.00) dollars for each occurrence, plus ten thousand (\$10,000.00) dollars for each individual. A copy of such policy shall be submitted for approval with the application for a license.

#### **4-22.4 Exemptions from Licensing.**

The provisions of this section shall not apply to massage or physical therapy treatments given by a massage therapist certified by either the A.M.T.A. or the A.M.B.P., and:

a. In the office of a licensed physician, osteopath, chiropractor or physical therapist.

b. In a regularly established medical center, hospital, or sanitarium having a staff which includes licensed physicians, chiropractors or physical therapists.

c. By any licensed physician, osteopath, chiropractor or physical therapist in the residence of his patient.

#### **4-22.5 Compliance with State and Local Laws.**

All massage establishments shall comply with all other State laws and local ordinances.

#### **4-22.6 Penalty.**

Any person violating any provision of this section shall, upon conviction, be liable for the penalty stated in Chapter 1, Section 1-5.

#### **4-22.7 Sexual Misconduct.**

It shall be unlawful for any licensee to operate any establishment as a massage establishment or any similar type business where any physical contact by the licensee or any employee of the licensee is provided resulting in sexual misconduct. Sexual misconduct shall be defined as follows:

- a. The purpose of this section is to identify licensee's conduct which shall be deemed sexual misconduct.
- b. As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

**CLIENT**-Any person who is the recipient of massage, bodywork or somatic therapy.

**CLIENT-THERAPIST RELATIONSHIP**-A relationship between a licensee and a client wherein the licensee owes a continuing duty to the client to render massage, bodywork or somatic therapy services consistent with his or her training and experience.

**SEXUAL CONDUCT**-The knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification.

**SEXUAL CONTACT**-Includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the client's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or client's body into or near the genital, anal or other opening of the other person's body. "Sexual contact" does not include the touching of a client's body which is necessary during the performance of a generally accepted and recognized massage, bodywork or somatic therapy procedure.

**SEXUAL HARASSMENT**-Solicitation of any sexual act, physical advances, or verbal or nonverbal conduct that is sexual in nature, and which occurs in connection with a licensee's activities or role as a provider of massage, bodywork or somatic therapy services, and that either: is unwelcome, is offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a client, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee.

SPOUSE-The husband, wife or fiancée of the licensee or an individual involved in a long-term committed relationship with a licensee. For purposes of the definition of "spouse," a long-term committed relationship means a relationship which is at least six (6) months in duration.

c. A licensee shall not engage in sexual contact with a client with whom he or she has a client-therapist relationship. The client-therapist relationship is ongoing for purposes of this section, unless the last massage, bodywork or somatic therapy was rendered more than three (3) months ago.

d. A licensee shall not seek or solicit sexual contact with a client with whom he or she has a client-therapist relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

e. A licensee shall not engage in any discussion of any intimate sexual nature with a person with whom the licensee has a client-therapist relationship, unless that discussion is directly related to a proper massage, bodywork or somatic therapy purpose. Such discussion shall not include disclosure by the licensee of his or her own sexual relations.

f. A licensee, shall provide privacy and therapy conditions which prevent exposure of the unclothed body of the client. Appropriate draping measures shall be employed to protect the client's privacy.

g. A licensee shall not engage in sexual harassment either within or outside of the professional setting.

h. A licensee shall not engage in any other activity which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or which is for the sexual arousal, or sexual gratification of the licensee or client or which constitutes an act of sexual abuse.

i. Nothing in this section shall be construed to prevent a licensee from rendering massage, bodywork or somatic therapy to a spouse, providing that the rendering of such massage, bodywork or somatic therapy is consistent with accepted standards of massage, bodywork or somatic therapy and that the performance of therapy is not utilized to exploit the spouse for sexual arousal or sexual gratification of the licensee.

j. It shall not be a defense to any action under this section that:

(1) The client solicited or consented to sexual contact with the licensee; or

(2) The licensee is in love with or held affection for the client.

#### **4-22.8 Non-preemption.**

This chapter is intended to be read in pari materia with any and all state regulations appertaining to the same or similar subject matter, including, but not by way of limitation, any and all regulations established by the Massage,

Bodywork and Somatic Therapy Examining Committee operating under the New Jersey Board of Nursing (P.L. 1999, c. 19, approved February 8, 1999, Assembly Bill No. 843).

**4-22.9 Severability.**

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**4-22.10 Repealer.**

All ordinances or parts of ordinances inconsistent herewith are repealed as to such inconsistencies.