

ORDINANCE 2317

AN ORDINANCE OF THE BOROUGH OF SOUTH PLAINFIELD REQUIRING LICENSING OF MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS

WHEREAS, pursuant to N.J.S.A. 40:48-1 and N.J.S.A. 40-48-2, a governing body of a municipality may make, amend, repeal and enforce such other ordinances, regulations, rules and bylaws not contrary to the laws of this State or the United States, as it may deem necessary and proper for the good of the government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by these subtitles, or by any law; and

WHEREAS, neither the State of New Jersey's statutory scheme regulating therapists, N.J.S.A. 45:11-53, et seq., known as the "Massage and Bodywork Therapist Licensing Act", nor the companion New Jersey Administrative Code provisions, N.J.A.C. 13:37A-1.1, et seq., which are designed to effectuate the statutory provisions, abrogate a municipality's ability to regulate the opening and maintenance of massage parlors and the practices of massage therapists therein;

WHEREAS, the Governing Body of the Borough of South Plainfield hereby finds that a business of operating a massage parlor is business effecting the public health, safety and general welfare of the municipality and its inhabitants; and

WHEREAS, the Governing body hereby finds as a fact that the operation of any establishment, public or private, as a massage parlor or any similar type of business where physical contact with the recipient of the services provided is by a person of the same or opposite sex, which physical contact induces or results in sexual contact, behavior or conduct, proscribed or otherwise is a matter of public concern, since the same affects the general health and welfare of the citizens of this municipality; and

WHEREAS, any business practices engaging in close physical contact can perpetuate the spread of illnesses and, as such, regulating businesses such as massage parlors where employees are in direct contact with patrons is in the best interests of the citizens of this municipality; and

WHEREAS, the provisions hereinafter enacted and described are deemed to be a necessity in the public interest, and these findings of fact and description of legislative intent are hereby declared as a matter of legislative determination; and

WHEREAS, based on the foregoing, the Governing Body finds that it is within the public interest to regulate massage establishment and massage therapists located and/or practicing within the Borough;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of South Plainfield, County of Middlesex, State of New Jersey as follows:

1. A new Chapter 294 of the Borough of South Plainfield Municipal Code entitled "Massage Establishments and Massage Therapists" is hereby added to read as follows:

§294-1. Purpose.

The purpose of this Chapter is to establish regulations and permit requirements for the operation of massage and bodywork therapy establishments in order to protect and preserve the health, safety and welfare of the citizens of the Borough of South Plainfield, and the patrons of such establishments, and to minimize and control adverse utilization of such establishments to preserve the quality of life, protect and preserve the character of the Borough.

§294-2. Definitions.

For the purpose of this Chapter, the following terms, phrases and words shall have the meanings stated herein.

CHILD-ORIENTED BUSINESS

An establishment or enterprise primarily focused on providing products or services designed specifically for children. These businesses typically cater to the developmental, educational, recreational or healthcare needs of children, offering age-appropriate activities, products and services aimed at enhancing their wellbeing, growth and enjoyment. Such businesses include, but are not limited to, daycare centers, educational institutions, recreational facilities, healthcare providers specializing in pediatric care, and entertainment venues tailored to children's interests and safety.

MASSAGE AND BODYWORK THERAPIES

The 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 access the body for purposes of applying therapeutic massage and bodywork 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, explaining and describing myofascial movement, self-care and stress management as it relates to massage and bodywork therapies. Massage and bodywork therapy practices are designed to affect the soft tissue of the body for the purpose of promoting and maintaining the health and well-being of the client. Massage and bodywork therapies do not include the diagnosis of illness, disease, impairment or disability.

MASSAGE AND BODYWORK THERAPIST

A person certified and/or licensed to practice massage and bodywork therapies pursuant to the provisions of the Massage, Bodywork and Somatic Therapist Certification Act, N.J.S.A. 45:11-53.

MASSAGE AND BODYWORK THERAPY ESTABLISHMENT

Any establishment, business or operation wherein massage and bodywork therapies are administered or are permitted to be administered, which shall include the operation of all outcall massage and bodywork therapy service.

§294-3. Permits Required.

A. Massage and bodywork therapy establishment permit required. No person, firm, corporation, organization or other entity shall own, maintain, operate or conduct a massage or bodywork therapy establishment or utilize any premises in the Borough as or for a massage and bodywork therapy establishment unless and until such person or entity first obtains a permit for such establishment or premises from the Borough in accordance with the terms and provisions of this Chapter.

B. Massage and bodywork therapist registration/ documentation required. No person shall practice massage and bodywork therapies within the Borough unless he/she has a valid and subsisting massage and bodywork therapist permit or license issued to him/her by the New Jersey Board of Massage and Bodywork Therapy, pursuant to the terms and provision of N.J.S.A. 45:11-53, et seq., and evidence of same has been submitted to the Borough in accordance with the terms and provisions of this Chapter.

§294-4. Fees and Renewals.

A. Every applicant for a permit to maintain, operate or conduct a massage, bodywork or somatic therapy establishment or out-call massage, bodywork or somatic therapy service shall file an application with the Clerk of the Borough upon a form provided by the Clerk and pay a fee of \$5,000.00. The license to be issued shall be valid for one calendar year from the date of issuance. This will not include establishments such as beauty salons where massage, bodywork or somatic therapy services are determined to only be a peripheral service offered, and not one of the primary businesses conducted at the establishment. The fee for those establishments so deemed to meet such criteria shall be \$500.00.

B. Licensees may renew their licenses prior to their expiration by filing a new application with the

Borough Clerk in the manner prescribed in this section and accompanied by the requisite fee.

§294-5. Application Requirements.

A. Any person, firm, corporation, organization or other entity applying for a massage and bodywork therapy establishment permit shall submit the required application, together with the associated fees, which shall include the following information:

1. The type of ownership of the establishment (i.e., whether individual, partnership, corporation or otherwise).
2. The name, style and designation under which the establishment is to be conducted.
3. The address and all telephone numbers and email address(es) where the establishment is to be maintained, operated and conducted.
4. A complete list of the name(s) and address(es) of all massage and bodywork therapists, along with a copy of each therapist's certificate and/or license issued by the State of New Jersey to the applicant pursuant to N.J.S.A. 54:11-53, et seq. and N.J.A.C. 13:37-16.1, et seq., name(s) an address(es) of other employees at the establishment, and the name and residence address of the manager or other person principally in charge of the day-to-day operation of the establishment.
5. The following personal information concerning the applicant if an individual; concerning each stockholder holding more than ten (10%) percent of the stock of a corporation, each officer and each director, if the applicant is a corporation; concerning 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:
 - (a) The name, residence address and residence telephone number. It shall be an ongoing responsibility of the applicant to notify the Borough, in writing, of any change in name, address or telephone number of the individuals identified.
 - (b) The two previous addresses immediately prior to the present address of the individuals identified.
 - (c) Written proof of age.
 - (d) Height, weight, sex and color of hair and eyes.
 - (e) Two front-faced portrait photographs of the individuals taken within 30 days of the date of the application, and at least two inches by two inches in size.
 - (f) The establishment or similar business history and experience, including, but not limited to, whether or not such person has previously operated such an establishment, along with the location of such prior operations, whether or not such person has previously applied for a license or permit for such an establishment, and if same was denied, revoked or suspended, and the reasons therefor.
 - (g) All criminal convictions, other than traffic violations, disorderly persons offenses and petty disorderly persons offenses shall be reported on the applicant's application fully disclosing the jurisdiction in which the crime was committed and circumstances thereof. The applicant shall execute a waiver and consent to allow a fingerprint and criminal background check by the Police Department. Upon completion of the background check, the Police Department, in its discretion, and based upon the circumstances of the offense or nature of the crime, shall make a recommendation, in writing, to the Borough Clerk as to whether the applicant may receive a license.
 - (h) All criminal convictions of disorderly persons offenses or petty disorderly persons offenses involving prostitution shall also be reported on the applicant's application fully disclosing the jurisdiction in which the crime was committed and circumstances thereof.
 - (i) The names and addresses of three (3) adult residents of the State of New Jersey who will serve as character references. These references must be persons other than relatives or business associates.

6. A sworn statement indicating that all massage, bodywork and somatic therapists employed are to be employed by the establishment or otherwise permitted to work at the establishment have been licensed to the State of New Jersey pursuant to the Massage and Bodywork Therapist Licensing Act, P.L. 1999(c).19. amended 2007.
- B. Registration/documentation of a massage and bodywork therapist. Any person registering as a massage and bodywork therapist shall submit the following information.
 1. The name, residence address and resident telephone number of the therapist. It shall be an ongoing responsibility of the therapist to notify the Borough, in writing, of any change in name, address or telephone number.
 2. A copy of a certificate and/or license issued by the State of New Jersey issued to the applicant pursuant to N.J.S.A. 54:11-53, et seq. and N.J.A.C. 13:37-16.1, et seq.
 3. Two front-faced portrait photographs of the individual taken within 30 days of the date of the application, and at least two inches by two inches in size.
 4. It shall be an ongoing responsibility of any person registered or requiring registration as herein outlined to notify the Borough, in writing, of any change in name, address or telephone number of the individuals identified.

§294-6. Building Requirements; Inspections.

Upon receipt of an application for a massage and bodywork therapy establishment permit, the Borough Clerk shall refer the application to the Police Department, Health Officer and/or Zoning Officer, and any other department deemed appropriate which departments may examine the application and inspect the premises where the proposed massage and bodywork therapy establishment is to be maintained, operated or conducted. No massage and bodywork therapy establishment shall be issued a permit or be maintained, operated or conducted in the Borough unless an approval by the Borough Clerk's Office, after review and approval of the Police Department, Health Department and such other departments that shall inspect the premises, has been granted indicating that the establishment complies with the minimum requirements of this ordinance as well as the Zoning and Health Codes for businesses operating in the Borough.

§294-7. Display of Licenses.

The massage and bodywork therapy establishment shall display the license issued by the Borough, and the certificate and/or license issued by the State of New Jersey to each and every massage and bodywork therapist pursuant to N.J.S.A. 54:11-53, et seq. and N.J.A.C. 13:37-16.1, et seq. employed and/or conducting business at the establishment in an open and conspicuous place within the premises of the establishment.

§294-8. Operating Requirements.

- A. Every portion of the massage and bodywork therapy establishment, including all appliances and apparatus, shall be kept clean and operated in a sanitary condition.
- B. Price rates for all services shall be prominently displayed in the reception area in a location available to all prospective customers.
- C. All employees, including massage and bodywork therapists, shall be clean and wear clean, nontransparent outer garments.
- D. Dressing areas for employees and customers shall be available on the premises. Such dressing areas shall be shielded from public view and provide the individual utilizing same privacy from all other individuals. If the dressing area is also used as the massage/therapy room, then adequate procedures shall be in place to safeguard the

privacy of the individual using same as a dressing area. In no case shall these dressing areas be locked when both a client and any employee are present.

E. All massage and bodywork therapy establishments shall provide clean, laundered sheets and towels in sufficient quantity, which shall be laundered after each use thereof and stored in a sanitary manner.

F. The sexual or genital area of customers must be covered by towels, cloths on undergarments when in the presence of an employee or massage and bodywork therapist.

G. It shall be unlawful for any person knowingly in a massage and bodywork 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.

H. No massage and bodywork therapist, employee or manager shall perform or offer to perform any act which would require the touching of the customer's sexual or genital area.

I. 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 or vapor rooms, steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the establishment 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. The massage and bodywork therapy establishment shall maintain inspection logs of not less than the 30 most recent days evidencing: i) date/time that repairs, maintenance and cleaning of each portion of the establishment occurred; and ii) the identity of the person(s) who performed such repair, maintenance or cleaning.

J. Oils, creams, lotions and other preparations used in administering massage and bodywork therapies shall be kept in clean, closed containers or cabinets.

K. Each massage and bodywork therapist shall wash his or her hands in hot running water, using antibacterial soap or disinfectant before administering massage and bodywork therapy to each customer.

L. No massage and bodywork therapy establishment shall permit any activity or behavior prohibited by the laws of the State of New Jersey, particularly, but not exclusive of laws proscribing prostitution, indecency and obscenity, including the sale, uttering or exposing and public communication of obscene material.

M. Hours of operation of any massage and bodywork therapy establishment shall not commence prior to 9:00 a.m. and shall not extend beyond 9:00 p.m.

N. During hours of operation, the public entryway into the massage and bodywork therapy establishment shall not be locked, barricaded or otherwise fastened in such a way as to limit or impede the immediate access into the establishment.

O. It shall be the responsibility of the owner(s) of the massage and bodywork therapy establishment and the holder of the license for the massage and bodywork therapy establishment to ensure that all employees, including massage and bodywork therapists comply with all provisions of this Chapter.

§294-9. Advertising and Solicitations Practices.

A. No person shall advertise or offer to provide massage-related services for compensation within the Borough unless licensed as a massage and bodywork therapy establishment pursuant to this Chapter.

B. All advertisements for massage therapy services to be provided within the Borough shall include the massage and bodywork therapy establishment's name as indicated on the permit application submitted to the borough, address and telephone number.

§294-10. Inspection of Establishment.

The Health Official shall, from time to time, and at least once a year, make an inspection of each massage and bodywork therapy establishment within the Borough for purposes of determining whether or not the provisions of this Chapter are being complied with. The Police Department shall also, from time to time, conduct inspections of each massage and bodywork therapy establishment to determine if there are any violations of this Chapter and/or violations of any other ordinance of the Borough, or the laws of the State of New Jersey on the premises. Such inspections, unless it appears that a violation of temporal limitations on hours of operation exists, shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any massage and bodywork therapy establishment to fail to allow such inspection officer access to the premises or to hinder such officer in any manner. If any massage and bodywork therapy establishment reasonably appears to be operating outside of the hours permitted hereunder, the Health Official, Construction Official, Fire Marshall and/or Police Department may immediately enter the premises notwithstanding any limitations to entry herein.

§294-11. Sleeping Quarters.

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

§294-12. Violations and Penalties; Suspension or Revocation of License.

A. Unless otherwise provided by law, any person violating any of the provisions of this Chapter shall, upon conviction thereof, and at the discretion of the Municipal Court, be punished by imprisonment for a term not exceeding 90 days or by a fine of not less than \$750.00 nor more than \$2,500.00, or both, for a first violation. A second violation of any provision of this Chapter shall be punished by imprisonment for a term not exceeding 90 days or by a fine of not less than \$1,500.00 not exceeding \$3,000.00, or both. A third or subsequent violation of this Chapter shall be punished by imprisonment for a term not exceeding 90 days or by a fine of less than \$2,500.00 nor exceeding \$5,000.00, or both.

B. Any conviction of a massage and bodywork therapist or any employee of a massage and bodywork therapy establishment of a violation of any activity or behavior prohibited by the laws of the State of New Jersey alleged to have occurred at or within a massage and bodywork therapy establishment, particularly, but not exclusive of laws proscribing solicitation, prostitution, indecency and obscenity, including the sale, uttering or exposing and public communication of obscene material, shall devolve upon the owner and/or manager of such establishment, it being specifically declared by that, following such a conviction of a massage and bodywork therapist or employee, the offensive activity or behavior of such massage and bodywork therapist or employee is imputed upon the owner and/or manager as an accessory to such a violation.

C. All applicable permit fees still apply.

D. Suspension.

1. In addition to any of the penalties provided herein or prescribed by law, and notwithstanding the filing of a summons and/or criminal complaint in the municipal court or Superior Court, any violation of the following provisions shall subject the massage and bodywork therapy establishment to the suspension of the applicable license:

- (a) Fraud, misrepresentation or false statement made by the applicant in the application for the permit.
- (b) Fraud, misrepresentation or false statement made by the applicant in the course of carrying on the permitted business of the Borough.
- (c) Any violation of any provisions of this Chapter by a massage and bodywork therapist, employee or independent agent of a massage and bodywork therapy establishment, manager, or owner of such establishment.

- (d) A conviction of a crime involving moral turpitude, a felony, an offense involving sexual misconduct, or any crime involving dishonesty of a massage and bodywork therapist, employee or independent agent of a massage and bodywork therapy establishment, manager, or owner of such establishment.
 - (e) Conducting the permitted business in the Borough in an unlawful manner or in such manner as to endanger the health, safety or general welfare of the public.
- 2. Such suspension shall be upon notice issued by the Borough Clerk after conferring with the Police Chief, Code Official, Zoning Officer and/or Health Official or their respective designees.
- 3. The said license(s) may be suspended by the Borough Clerk if, in his/her discretion and opinion after consultation with the Police Chief, Code Official, Zoning Officer and/or Health Official or their respective designees, the conduct of the licensee is detrimental to the health, safety and general welfare of the Borough of South Plainfield.

§294-13. Prohibited Acts.

A. No owner or manager of a massage, bodywork or somatic therapy establishment shall tolerate in the establishment any activity or behavior prohibited by the laws of the State of New Jersey, particularly, but not exclusive of laws proscribing prostitution, indecency and obscenity, including the sale, uttering or exposing and public communication of obscene materials; laws which relate to the commission of sodomy, relating the commission of adultery, and proscribing fornication; nor shall any owner or manager tolerate in his or her establishment an activity or behavior which violates this section. 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.

B. Any conviction of a massage, bodywork or somatic therapy establishment, or any employee thereof, of a violation of the aforesaid statutes and codes shall devolve upon the owner or manager of the establishment, it being specifically declared that following such a conviction of the owner or the manager of the establishment shall be prosecuted as an accessory to such a violation and the required permits will be automatically revoked.

§294-14. Revocation of License.

A. Licenses issued under this section may be revoked by the Borough Clerk after notice and a hearing for any of the following causes:

- 1. Fraud, misrepresentation or false statement in the application for license;
- 2. Any violation of this section;
- 3. Fraud, misrepresentation or false statement made in the course of carrying on the licensed business in the Borough;
- 4. If the Chief of Police, Health Officer or their designee is denied access to the premises for the purpose of conducting an inspection;
- 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; or
- 6. Conducting a licensed business in the Borough in an unlawful manner and in any such 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 ground of the complaint and the time and place of the hearing. Such notice shall be given personally or mailed to the licensee at their last known address at least five calendar days prior to the date for the hearing.

C. Such license may, pending revocation proceedings, be suspended for not more than ten days by the Borough Clerk if, in his or her opinion, the conduct of the licensee is detrimental to the health, safety and general welfare of the Borough. The Borough Clerk or their designee shall serve as hearing officer of any hearing pursuant to this subsection.

§294-15. Criteria for Immediate Closure.

A. The licenses issued under this section may be immediately suspended by the Chief of Police, the Director of the Health Department, or the Borough Clerk or their designee for the following reasons:

1. Massage, bodywork or somatic therapy is provided by a unlicensed therapist; or
2. Unsanitary or unsafe conditions which may adversely impact the health or safety of the public.

§294-16. Relicensing after Revocation.

A. Any person whose license has been revoked under the provisions of 294-14 may apply to be relicensed upon filing of proof that all loss caused by the acts or omissions for which the license was revoked have been fully satisfied, and all conditions imposed by the decision of the revocation have been met.

B. Payment of a registration fee established in 294-4.

§294-17. Service of Notice.

Whenever notice is required or permitted to be given by this section, 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, or corporation, or alternatively, to any of the foregoing, by certified mail, return receipt requested, to the last address listed with the Borough Clerk in conjunction with the license information. It shall be the duty of each licensee to keep the Borough advise of any subsequent change of address. Upon failure of a licensee to comply with this requirement, any notice returned with the notation "unknown" or "moved" or "not claimed" shall be deemed proper service of all notices required by this section.

§294-18. Exceptions.

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

- A. In the offices of a licensed physician, chiropractor or physical therapist;
- B. By a regularly established medical center, hospital or sanitarium having a staff which includes licensed physicians, chiropractors or physical therapists;
- C. By any licensed physician, chiropractor or physical therapist in the residence of his or her patient;
- 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. 45:58-1, et seq.

This Ordinance shall take effect upon final passage and publication in accordance with New Jersey law.