

## **ORDINANCE 2021-13**

**Adopted May 3, 2021**

### **AN ORDINANCE OF THE BOROUGH OF DUNELLEN 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 by-laws not contrary to the laws of this state or of 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; and

**WHEREAS**, the governing body of the Borough of Dunellen hereby finds that the business of operating a massage business is business affecting 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**, in light of the recent pandemic and information learned therefrom, 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 establishments and massage therapists located and / or practicing within the Borough;

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

1. A new Chapter 191 of the Borough of Dunellen Municipal Code entitled “Massage Establishments and Massage Therapists” is hereby added to read as follows:

**§ 191-1 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 Dunellen, 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.

**§ 191-2 Definitions.**

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

**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 assess 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 an outcall massage and bodywork therapy service.

#### **§ 191-3 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 and bodywork therapy establishment or utilize any premises in the Borough of Borough as or for a massage and bodywork therapy establishment unless or until such person or entity first obtained a permit for such establishment or premises from the Borough of 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, 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 provisions of N.J.S.A. 45:11-53 et seq., and evidence of same has been submitted to the Borough of Dunellen in accordance with the terms and provisions of this chapter.

#### **§ 191-4 Applications; fees.**

##### **A.**

Every applicant for a massage and bodywork therapy establishment permit shall file an application with the Borough Clerk upon a form to be provided by said Clerk and pay an annual fee for the sum of:

##### **(1)**

\$250 per massage table;

##### **(2)**

\$100 per massage chair; and

##### **(3)**

\$500 per shower fixture or room, whichever is greater in number.

##### **B.**

Upon receipt of a completed application for a massage and bodywork therapy establishment, full payment of the fees herein, and registration of all massage and

bodywork therapists who shall provide services and/or be employed at the massage and bodywork therapy establishment, the Borough Clerk shall issue a license to operate, but not prior to the application being processed and approvals granted by all responsible parties. Responsible parties are granted up to 30 days to review and act on the application following receipt of the completed application. Notwithstanding anything to the contrary herein, prior to performing any services as a massage and bodywork therapist at any establishment herein described, the therapist must first register, as herein required.

**§ 191-5 Application requirements.**

**A.**

Application for a massage and bodywork therapy establishment permit. 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 issued to the applicant pursuant to N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37-16.1 et seq., name(s) and 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 direct or beneficial interest in stock of the corporation, each officer and director, if the applicant is a corporation; concerning each partner, including limited partners, if the applicant is a partnership; concerning the members, if the applicant is a limited-liability company; and concerning the manager or other person principally in charge of the day-to-day operation of the establishment:

**(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.

**(6)**

Floor plans for the proposed facility.

**(7)**

The names and addresses of three adult residents of the State of New Jersey who will serve as character references for the applicant. These references must be persons other than relatives and business associates of the applicant.

**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 residence 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. 45:11-53 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 hereunder outlined, to notify the Borough, in writing, of any change in name, address or telephone number of the individuals identified.

**§ 191-6 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, the Health Officer and/or the 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 by 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 of Dunellen.

**§ 191-7 Display of permits.**

The massage and bodywork therapy establishment shall display the permit issued by the Borough, and the certificate and/or license issued by the State of New Jersey to each and every massage and bodyworks therapist pursuant to N.J.S.A. 45:11-53 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.

**§ 191-8 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

therapy/massage 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 or 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 for 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.**

Animals, except for Seeing Eye dogs, shall not be permitted in the massage and bodywork work area.

**L.**

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

**M.**

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.

**N.**

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.

**O.**

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

**P.**

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.

**§ 191-9 Advertising and solicitation practices.**

**A.**

No person shall advertise or offer to provide massage-related services for compensation within the Borough of Dunellen 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 of Dunellen shall include the massage and bodywork therapy establishment's name as indicated on the permit application submitted to the Borough, address, and telephone number.

**§ 191-10 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 of Dunellen or the laws of the State of New Jersey on the premises. Such inspections, unless it appears that a violation of the 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 Marshal and/or Police Department may immediately enter the premises notwithstanding any limitations to entry herein.

**§ 191-11 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 a massage and bodywork therapy treatment. This provision shall not preclude the location of a massage and bodywork therapy establishment in separate quarters of a building housing a hotel, motel or other separate business.

**§ 191-12 Violations and penalties; suspension or revocation of permit.**

**A.**

Unless otherwise provided by law, any person violating the 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 nor more than \$2,500, 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, nor exceeding \$3,000, 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, nor exceeding \$5,000, or both.

**B.**

Any conviction of a massage and bodyworks 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 bodyworks therapist or employee, the offensive activity or behavior of such massage and bodyworks 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/revocation.

**(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 or revocation of the applicable permit:

**(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 in the Borough.

**(c)**

Any violation of any provisions of this chapter.

**(d)**

A conviction of a crime involving moral turpitude, a felony, an offense involving sexual misconduct, or any crime involving dishonesty.

**(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 or revocation 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 permit(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 permittee is detrimental to the health, safety and general welfare of the Borough of Dunellen.