

ORDINANCE #2013-3

AN ORDINANCE OF THE BOROUGH OF CHESTER, MORRIS COUNTY AMENDING CHAPTER 170 (MASSAGE, BODYWORK AND SOMATIC THERAPY ESTABLISHMENTS) OF THE CODE OF THE BOROUGH OF CHESTER TO CONFORM WITH THE REQUIREMENTS OF MASSAGE, BODYWORK AND SOMATIC THERAPIST CERTIFICATION ACT.

WHEREAS, municipalities are empowered to make, amend, repeal, and enforce its ordinances pursuant to Statute (N.J.S.A. 40:48-1, et seq.); and

WHEREAS, the Mayor and Council wish to update the Code of the Borough of Chester to conform with Massage, Bodywork and Somatic Therapist Certification Act (N.J.S.A. 45:11-23 *et seq.*); and

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Chester, in the County of Morris and State of New Jersey, that Chapter 170 of the Code of the Borough of Chester is hereby amended as follows:

SECTION 1

§170-2 (Permits required) is hereby revised as follows:

- A. The last word of §170-2(A) is hereby amended to replace the word “section” with the word “chapter.”
- B. The second sentence of §170-2(B) is revised to read as follows: “No person shall practice massage or related therapies as a massage, bodywork or somatic therapist, employee or otherwise, unless he or she has a valid and subsisting massage, bodywork and somatic therapist's license issued to him or her by the State of New Jersey pursuant to the Massage, Bodywork and Somatic Therapist Certification Act, P.L. 1999 c.19, amended 2007 c.337 (N.J.S.A. 45:11-53 *et seq.*).”
- C. §170-2(C) is deleted in its entirety.

SECTION 2

§170-3 (Application for establishment permit) is hereby revised as follows:

- A. The last sentence of §170-3(F)(7) is revised to delete the phrase ‘...involving prostitution or lewdness’ which shall be replaced with “...other than traffic violations.”
- B. A new sub-section H shall be added to read as follows: “H. The fingerprints of the applicant as set forth in §170-6”

SECTION 3

The following sub-sections of §170-5 (Building requirements; inspections) are hereby revised as follows:

- A. The first sentence of §170-5 is revised to delete the word “Planning” and replace it with “Zoning” and delete “Division of Licensing and Permits” which shall be replaced with “Borough Clerk.”
- B. §170-5 (A) is revised to read as follows: “All massage tables, rest rooms, bathtubs, shower stalls, steam areas and floors shall be constructed of material with surfaces which may be readily disinfected and shall be maintained in a sanitary condition and regularly cleaned and disinfected.”
- C. §170-5 (B) is revised to read as follows: “Adequate private dressing and rest room facilities shall be provided for the patrons and employees during all business hours.”
- D. §170-5 (C) is revised to read as follows: “The premises shall have adequate equipment to and shall disinfect and sterilize nondisposable instruments and materials used in

administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.”

- E. §170-5 (D) is revised to read as follows: “Adequate hand-washing facilities shall be provided at convenient locations as necessary to maintain clean hands and arms of all employees during hours of operation. Hand sinks shall be provided with hot and cold water capable of delivering running water under pressure and at temperature of 90 to 110 degrees Fahrenheit. Hand sinks shall be supplied with liquid soap and disposable hand towels at all times.”
- F. §170-5 (E) is revised to read as follows: “Water closets, rest rooms and lavatories shall be in conformance with the regulations set forth in the New Jersey Uniform Construction Code (N.J.A.C. 5:23).”

SECTION 4

§170-6 (Application for therapist’s permit) is hereby deleted in its entirety.

SECTION 5.

§170-7 (Therapist permit fee) is hereby deleted in its entirety

SECTION 6.

§170-8 (Investigating and fingerprinting of applicant; provisional permit) is hereby renumbered to §170-6 and the reference to “provisional permit” in the title is hereby deleted. The following sub-sections are hereby revised as follows:

- A. Former sub-section §170-8(B) (now §170-6(B)) is revised to read as follows: “When said application is properly filled out, signed by the applicant and has been filed with the Borough Clerk with all accompanying information, the application shall be referred by the Clerk to the Borough Police Department. The Chief of Police or his or her designee shall investigate the information available and shall approve or disapprove the application within 90 days. If the result of such investigation(s) of the applicant’s character or business responsibility is found to be unsatisfactory or that the issuance of a permit to the applicant would present a danger to the public health, safety or welfare, the Chief of Police shall list the reasons for disapproval in writing and shall return the application to the Borough Clerk who shall notify the applicant of the denial of the permit. If the results of the investigation are satisfactory, the application shall be returned to the Borough Clerk who shall issue the permit to the applicant.”
- B. Former sub-section §170-8(C) is deleted in its entirety.

SECTION 7.

§170-9 (Suspension or revocation of permit) is hereby renumbered to §170-7. The following sub-sections are hereby revised as follows

- A. Former sub-section §170-9(A)(4) (now §170-7(A)(4)) is revised to read as follows: “Conviction by the owner or employee 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.”
- B. Former sub-section §170-9(C) (now §170-7(C)) is revised to read as follows: “Such permit may, pending revocation proceedings, be suspended for not more than ten (10) days by the Chief of Police, Health Officer or Borough Council, or their designee, if it is their opinion the conduct of the permittee is detrimental to the health, safety and general welfare of the Borough of Chester.”
- C. Former sub-section §170-9(D) (now §170-7(D)) is revised to read as follows: “The Chief of Police, Health Officer, Zoning Officer, or their designee, or such individual as shall be designated by the Borough Council, shall serve as the hearing officer for any hearing pursuant to this section.”

SECTION 8.

§170-10 (Rules of conduct; display of permit) is hereby renumbered to §170-8. The title of the section is revised to read as follows: “Rules of conduct; operating requirements.” The following sub-sections are hereby revised as follows

- A. Former sub sub-section §170-10(A) (now §170-8(A)) is revised include the following sentence at the end of the sub-section: “Massage tables shall be maintained in good condition and free of rips and tears.”
- B. Former sub-section §170-10(B) (now §170-8(B)) is revised to read as follows: “Price rates for all services shall be prominently posted (brochures or price lists) in the reception area in a location available to all prospective patrons.”
- C. Former sub-section §170-10(C) (now §170-8(C)) is revised to include the following at the end of the third sentence: “without locks.”
- D. Former sub-section §170-10(D) (now §170-8(D)) is revised to read as follows: “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. 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 bleach or an antibacterial agent, and dried on the high heat setting in a clothes dryer. Linens used in the establishment may not be laundered in a private home. Soiled linens shall be stored in closed containers.”
- E. Former sub-section §170-10(H) (now §170-8(H)) is revised to read as follows: “All walls, ceilings, floors and all other physical facilities and surfaces 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 compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and shower stalls shall be thoroughly cleaned after each use. When carpeting is used on the floors, it shall be kept dry, clean and sanitary.”

SECTION 9.

§170-11 (Inspections) is hereby renumbered to §170-9. This section is hereby amended to add the following sentence at the end of the paragraph: “The operator of any establishment permitted pursuant to this chapter shall allow access for inspection to all parts of the establishment and all pertinent records shall be made available to the Health Officer or designee for review.”

SECTION 10.

§170-12 (Sleeping quarters) is hereby renumbered to §170-10.

SECTION 11.

§170-13 (Prohibited acts) is hereby renumbered to §170-11.

SECTION 12.

§170-14 (Exceptions) is hereby renumbered to §170-12.

SECTION 13.

§170-15 (Violations and penalties) is hereby renumbered to §170-17 and shall read as follows: “In addition to the revocation or suspension of the permit granted under this chapter, any person who violates any provision of this chapter shall, upon conviction hereof, be punished by imprisonment for a term not to exceed 90 days and/or by a fine not to exceed \$2,000 or by a period of community service not to exceed 90 days, at the discretion of the Court pursuant to §1-17 of the Borough Code.”

SECTION 14.

The following new sections are hereby added to Chapter §170 to read as follows:

- A. §170-13 (Criteria for Immediate closure)

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

1. Massage, bodywork or somatic therapy is provided by unlicensed therapist or employee.

2. Unsanitary or unsafe conditions which may adversely impact the health and/or safety of the public.

B. §170-14 (Display of Licenses)

The massage, bodywork and somatic therapy establishment shall display its permit 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 in the reception area of the establishment.

C. §170-15 Relicensing after Revocation.

Any owner whose permit has been revoked pursuant to the provision of this chapter may apply to be relicensed upon filing of proof that all acts or omissions for which the permit was revoked have been fully satisfied and that all conditions imposed by the decision of the revocation have been complied with. If relicensing is approved, the license may be issued upon payment of the licensing fee as set forth in Chapter 127 of the Borough Code.

D. §170-16 Services of notices

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

SECTION 15. §127-1 (Fees) is hereby amended to delete Ch. 170, §170-7 (Annual Permit Fee for Individual Therapist - \$25.00).

SECTION 16. If any Chapter, Article, Section or Sub-Section, Clause or Phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction such decisions shall not affect the remaining portions of this Ordinance.

SECTION 17. All ordinances or rules or regulations of the Borough of Chester which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 18. This ordinance shall take effect upon adoption of the Borough Council of the Borough of Chester.

Robert L. Davis, Mayor

Attest:

Valerie A. Egan, Borough Administrator/Clerk

LEGAL NOTICE OF FINAL ADOPTION

NOTICE is hereby given that the above Ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Chester, in the County of Morris, State of New Jersey, held in the municipal building on the 19th day of March 2013, and the same came up for final passage at a meeting of

the said Borough Council on the 16th day of April, 2013 at which time, after persons interested were given an opportunity to be heard concerning said ordinance, the same was passed and will be in full force in the Borough according to law. By order of the Borough Council of the Borough of Chester, County of Morris and State of New Jersey.

Valerie A. Egan, Municipal Clerk