

**Explanation:** This Ordinance repeals Chapter 205, titled “Massage Therapists”, and replaces Chapter 205 with a new Chapter 205, titled “Massage Establishments”, of the Code of the Township of Hillsborough.

**ORDINANCE 2010-34**

**AN ORDINANCE REPEALING CHAPTER 205, TITLED “MASSAGE THERAPISTS” AND REPLACING CHAPTER 205 WITH A NEW CHAPTER 205, TITLED “MASSAGE ESTABLISHMENTS”, OF THE CODE OF THE TOWNSHIP OF HILLSBOROUGH.**

**WHEREAS**, the State of New Jersey enacted the “Massage and Bodywork Therapist Licensing Act”, N.J.S.A. 45:11-53, et seq.; and

**WHEREAS**, the “Massage and Bodywork Therapist Licensing Act”, created within the Division of Consumer Affairs in the Department of Law and Public Safety, the “New Jersey Board of Massage and Bodywork Therapy”; and

**WHEREAS**, the “Massage and Bodywork Therapist Licensing Act” provides exclusive jurisdiction to the “New Jersey Board of Massage and Bodywork Therapy” for adoption of rules and regulations for the licensing of massage therapists; and

**WHEREAS**, the “New Jersey Board of Massage and Bodywork Therapy” adopted rules and regulations for the licensing of massage therapists, N.J.S.A. 13:37-16.1, et seq.; and

**WHEREAS**, the “Massage and Bodywork Therapist Licensing Act” expressly supersedes any municipal ordinance or regulation that provides for the licensing, certification or registration of massage and bodywork therapists, N.J.S.A. 45:11-78; and

**WHEREAS**, the current Township of Hillsborough Ordinance, Chapter 205, titled “Massage Therapists”, contains various provisions pertaining to the licensing of massage therapists that are superseded by the “Massage and Bodywork Therapist Licensing Act”; and

**WHEREAS**, the Township Committee of the Township of Hillsborough believes that for the preservation of the public health, safety and welfare of the municipality and its residents, there needs to be an enforceable ordinance within the Township Code for the licensing and regulation of massage establishments consistent with state statute and administrative regulations.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Hillsborough as follows:

Section 1. Chapter 205 of the Code of the Township of Hillsborough, titled “Massage Therapists”, is hereby repealed and replaced with a new Chapter 205, titled “Massage Establishments” as follows:

## **Chapter 205**

### **Massage Establishments**

§205-1 Preamble. It is declared that the business of operating massage establishments, as defined in this Chapter, is a business affecting the public health, safety and welfare of the municipality and its residents.

§205-2. Definitions. As used in this Chapter, the following terms shall have the meanings indicated:

Advertisement. Any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media which directly or indirectly induces or attempts to induce any person or entity to purchase or enter into an agreement to purchase services related thereto from a massage establishment or massage therapist.

Electronic media. Radio, television and internet.

Employee. Any person other than a massage therapist who renders any service in connection with the operation of a massage business and receives compensation from the operator of the massage establishment or its patrons.

Licensee. The operator of a massage establishment.

Massage. 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 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, external application of herbal or topical preparations not classified as prescription 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 the purpose of promoting and maintaining the health and well being of the client. Massage, bodywork and somatic therapies do not include the diagnosis or treatment of illness, disease, impairment or disability.

Massage establishment. Any establishment where any person, firm, association or corporation engages in, carries on or permits to be engaged in or carried on any of the activities mentioned in the definition of massage for compensation of any kind.

Massage therapist. An individual who has taken courses in massage therapy and has received a diploma or certificate of completion in the area of massage therapy from an educational institution offering degrees and/or certifications in massage therapy and who holds a valid certification or license issued by the New Jersey Board of Massage and Bodywork Therapy.

Patron. Any person who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give other consideration therefore.

Person. Any individual, firm, association, corporation or combination of individuals of whatever form or character.

Print media. Newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, signs, business cards, match covers and other similar items, documents or comparable publications, the content of which is disseminated by means of the printed work.

Sexual or genital area. Genitals, anus or perineum of any person or the breasts or vulva of a female.

#### §205-3. Licensing of Massage Establishments.

- a) No massage establishment shall operate or provide massage services within the municipality without obtaining a license from the Clerk of the Township of Hillsborough. The license is specific to massage establishments and is independent of any certificate of occupancy or approval for the use of any premise as a massage establishment.
- b) Any person seeking to obtain a license to operate a massage establishment within the municipality must provide the following:
  - 1) A completed application as provided by the Clerk of the Township of Hillsborough accompanied by an application fee in the amount of \$200.00;
  - 2) The names, addresses, dates of birth and social security numbers for each person having an ownership interest in the massage establishment;
  - 3) The names, addresses, dates of birth and social security numbers for each massage therapist who will provide massage services for the massage establishment;
  - 4) A copy of a valid certification or license issued by the New Jersey Board of Massage and Bodywork Therapy for each massage therapist who will provide massage services for the massage establishment;
  - 5) A copy of a driver's license, passport or other government issued photograph identification for each person having an ownership interest in the massage establishment. The copy shall be in color and of such quality so that the owner is readily identifiable from the photograph;
  - 6) A copy of a driver's license, passport or other government issued photograph identification for each massage therapist providing massage services for the massage establishment. The copy shall be in color and of such quality so that the massage therapist is readily identifiable from the photograph;
  - 7) A current photograph and fingerprinting from the Township of Hillsborough Police Department for each person having an ownership interest in the massage establishment together with a check made payable to the New Jersey State Bureau of Investigation to cover the cost of a criminal background investigation on each person having an ownership interest in the massage establishment. This shall be a one time requirement, unless there is a change in ownership interest;

- 8) Satisfactory proof of business liability insurance; and
  - 9) Satisfactory proof all applicable building, zoning, health and fire code requirements have been met and inspection certificates issued.
- c) Every massage establishment license issued pursuant to this Chapter shall expire at the end of the calendar year, unless sooner suspended or revoked, and shall be renewed upon compliance with the licensure requirements above, except that the renewal fee shall be \$100.00 annually. Licensees shall submit an application for renewal no later than October 31st of the year prior to that requested on the application. Those failing to submit a timely renewal application shall be required to reapply as and be subject to the conditions and fees of an initial applicant.

#### §205-4. Investigation.

- a) When the application is properly completed and signed by the applicant, the original, duplicate and applicable fees shall be filed with the Township Clerk. The Clerk shall refer the duplicate to the Chief of Police, who shall make or cause to be made an investigation and criminal background check of each person having an ownership interest in the massage establishment and of each massage therapist providing massage services for the massage establishment.
- b) Upon completion of the criminal background investigation, the Chief of Police shall endorse the application noting approval or disapproval and forward the application to the Township Clerk with supporting information. Disapproval by the Chief of Police shall be based on information disclosed by the investigation and criminal background check that indicates the issuance of the license would not be in the best interest of the public.
- c) Upon approval by the Chief of Police, the Township Clerk shall forward the application to the applicable Township departments to verify that all building, zoning, health and fire code requirements have been met.
- d) If the Chief of Police approves the application and the Township Clerk has determined that the remaining requirements are satisfied, the Township Clerk shall cause said license to be issued.
- e) The massage establishment shall immediately notify the Township Clerk of any change in ownership interest or any change in massage therapists performing massage services at the massage establishment. The information set forth in §205-3 above shall be provided for each new owner or massage therapist. The Township Clerk shall forward the information to the Chief of Police for investigation and criminal background check. No massage establishment shall permit a massage therapist to perform massage services at the massage establishment until the information set forth in §205-3 is provided to the Township Clerk.

#### §205-5. Display of licenses.

- a) Every massage establishment shall display in a conspicuous place so as to be readily seen by persons entering the premises a valid massage establishment license issued by the municipality.
- b) Every massage establishment shall maintain on file for inspection a valid certification or license issued by the New Jersey Board of Massage and Bodywork Therapy for each massage therapist providing massage services at the premises. The file shall also contain a copy of a driver's license, passport or other government issued photograph identification for each massage therapist providing massage services at the premises. The copy shall be in color and of such quality so that the massage therapist is readily identifiable from the photograph.

§205-6. Operating requirements.

- a) Price rates for all services offered by the massage establishment shall be prominently posted in the reception area. No services shall be offered or provided by the massage establishment or massage therapist unless specifically posted in accordance herewith.
- b) All employees, including persons performing a massage, shall wear nontransparent outer garments, covering the sexual and genital areas.
- c) The sexual or genital area of patrons must be covered by towels or cloths or undergarments when in the presence of an employee or massage therapist.
- d) No employee or patron shall touch or fondle, or offer to touch or fondle, in any manner the sexual or genital area of any person.
- e) Hours of operation shall be limited to 5:00 a.m. to 11:00 p.m.
- f) Every massage establishment and massage therapist shall comply with the infection control precautions currently set forth at N.J.A.C. 13:37-16.8 and as may be amended.
- g) Every massage establishment and massage therapist shall comply with the sexual misconduct provisions currently set forth at N.J.A.C. 13:37-16.12 and as may be amended.
- h) Every massage establishment and massage therapist shall comply with the recordkeeping requirements currently set forth at N.J.A.C. 13:37-16.14 and as may be amended.

§205-7. Advertising and solicitation practices.

- a) No person shall advertise or offer to provide massage related services for compensation within the Township of Hillsborough unless licensed as a massage establishment pursuant to this Chapter.
- b) All advertisements for massage services to be provided with the Township of Hillsborough shall include the massage establishment's name, address and telephone number.

§205-8. Change of location.

Once a license has been issued, any change in the location of the massage establishment premises shall be on notice and approval of the Township Clerk. A change of location fee in the amount of \$ 100.00 shall be paid to the Township.

§205-9. Employees.

It shall be the responsibility of the owners of the massage establishment and the holder of the license for the massage establishment to ensure that all persons and massage therapists comply with the provisions of this Chapter.

§205-10. Inspections.

The Township Police Department, Board of Health, Fire Department and Code Officer may make inspections of any and all parts of the massage establishment to ensure compliance with the provisions of this Chapter, the Township Code, and laws and administrative codes of the State of New Jersey.

§205-11. Revocation of license.

- a) The Township Clerk may revoke the license of a massage establishment for any of the following reasons:
  - 1) The massage establishment violates or fails to comply with any provisions of this Chapter, the Township Code, or laws and administrative codes of the State of New Jersey;
  - 2) Any person or massage therapist employed by the massage establishment violates or fails to comply with any provisions of this Chapter, the Township Code, or laws and administrative codes of the State of New Jersey;
  - 3) Anyone with an ownership interest in the massage establishment is convicted of a criminal or quasi-criminal offense related to the massage establishment business or any sex related offense;
  - 4) Any person or massage therapist employed by the massage establishment is convicted of a criminal or quasi-criminal offense related to the massage establishment business or any sex related offense;
  - 5) The massage establishment is engaged in the practice of massage under a false or assumed name, or is using the name of a licensed massage therapist not associated with the massage establishment; and
  - 6) The massage establishment employs or permits any person without a valid certification or license from the New Jersey Board of Massage and Bodywork Therapy to provide massage services for the massage establishment.

- (b) The Township Clerk shall cause a notice of license revocation to be issued to the licensee at the licensee's most recent address on file, that the license has been revoked. Within ten (10) days of the delivery of said notice, the applicant may appeal to the Township Committee to reinstate the license. The Township Committee shall hold a hearing. Once the ten (10) day appeal period has passed, or if upon appeal to the Township Committee the license revocation is upheld, the massage establishment or individual will be barred from providing massage services within the Township for a period of five (5) years.

§205-12. License Renewal.

- a) The \$100.00 annual renewal fee and application for a massage establishment shall be submitted to the Township Clerk by October 31st of the current year.
- b) From the date of original issuance, each licensee shall be subject to periodic criminal background investigations by the Police Department.

§205-13. Violations and penalties.

Any person who shall violate any of the provisions of this Chapter shall, upon conviction, be fined a minimum of \$500.00 and a maximum of \$2,000.00, and may be imprisoned for up to ninety (90) days in jail for each offense.

§205-14. Exemptions.

- a) The requirements of this Chapter shall have no application and effect upon any physician, surgeon, chiropractor, osteopath, nurse, nurse practitioner, physician's assistant, or physical therapist duly licensed to practice such professions in this State.
- b) The requirements of this Chapter shall not apply to any school certified to teach massage by the New Jersey Department of Education.

Section 2. Severability.

If any section, paragraph, subdivision, clause or provision of this Chapter shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision and the remainder of this Chapter shall be deemed valid and effective.

Section 3. Effective Date.

This Ordinance shall take effect as provided by law.

**ATTEST:**

**HILLSBOROUGH TOWNSHIP**

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Kevin P. Davis, Clerk

Frank DelCore, Mayor

*Introduced: 11/09/10*

*Published: 11/18/10*

*Public Hearing: 12/14/10*

*Adopted: 12/14/10*

*Published: 12/23/10*

*Send to E-Code: 12/15/10*