

TOWNSHIP OF LUMBERTON, NEW JERSEY

ORDINANCE NO. 2019-04

**COMPREHENSIVE ORDINANCE AMENDING THE TOWNSHIP CODE
AS PART OF THE TOWNSHIP'S CODIFICATION PROCESS**

WHEREAS, the Township, working with the Township Solicitor and General Code, the Code Book Publisher, continue to perform a comprehensive review of all chapters of the municipal code to ensure that the code matches current federal and state statutes and regulations; and

WHEREAS, the process has identified multiple areas of the Township Code that need updates; and

WHEREAS, rather than passing numerous individual ordinances, the Township seeks to accomplish this goal with several comprehensive ordinances covering multiple chapters of the Code where the changes are minor and routine;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, by the Township Committee of the Township of Lumberton, County of Burlington, State of New Jersey that the Code of the Township of Lumberton be and is hereby amended as follows in accordance with the Township's Codification process;

Section One. Amendments to Chapter 88.

The Township repeals and replaces Chapter 88 of the Township Code entitled "Massage, Bodywork and Somatic Therapy Establishments" and replace same with a new Chapter 88 entitled "Massage and Bodywork Establishments" for consistency with state regulations to read as follows:

"CHAPTER 88 MASSAGE AND BODYWORK ESTABLISHMENTS

§ 88-1 Definitions

As used in this chapter, the following words shall have the following meanings:

"Massage and Bodywork Therapies" or "Massage" and "Bodywork": 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": Any person who administers Massage and Bodywork therapies for consideration; or anyone licensed by the New Jersey Board of Massage and Bodywork Therapy pursuant to N.J.S.A. 45:11-53 et seq. and N.J.S.A. 45:11-68 et seq.

§ 88-2 Massage and Bodywork Business Permit Required.

- I. No person, firm, or corporation shall operate any establishment or utilize any premises to offer massage and bodywork therapies unless and until the establishment has received a massage and bodywork business permit from the Township Clerk of the Township of Lumberton.

§ 88-3 Application: fee, duration, and requirements.

- I. Each applicant for a massage and bodywork business permit shall file an application with the Lumberton Township Municipal Clerk upon a form provided by said Lumberton Township Municipal Clerk and pay a fee of \$500. The permit to be issued shall be valid for a period of three years. Renewal applications shall follow identical procedures as the initial permit and must be submitted prior to the expiration of the initial permit on the third anniversary of its issuance.
- II. Each applicant for a permit shall have attached a copy of a valid state-issued license from the New Jersey Board of Massage and Bodywork Therapist for each therapist employed in the establishment. Updated copies shall be required upon each renewal of the permit.
- III. The application shall require the applicant to furnish the following:
 - a. The type of ownership of the business, i.e., whether individual, partnership, corporation, or otherwise.
 - b. The name, style, and designation under which the business is to be conducted.
 - c. Business address, including all telephone and facsimile numbers of where the business is to be conducted.
 - d. A complete list of the names and addresses of all massage and bodywork therapists and employees in the business and the name and residence address of the manager or other person principally in charge of the operation of the business
 - e. Personal information of the applicant, if an individual, or if a corporation, of the person principally in charge of the operation of the business including:
 - i. Name
 - ii. Address
 - iii. Telephone number
 - iv. Two immediately prior addresses
 - v. Proof of age

§ 88-4 Township Committee Approval

- I. Each application for a massage establishment permit or the renewal thereof, which shall be submitted to the Township Clerk, must be approved by the Township Committee before any permit is issued. The Township Committee shall not approve said application unless a copy of the establishment's state-issued license and a copy of the state-issued license for each of the establishment's therapists are attached to the permit application.

§ 88-5 Building Requirements, inspections

- I. The Municipal Clerk, upon receiving an application for a massage, and bodywork therapy establishment permit, shall refer the application to the Building Inspector, the Fire Department, the Police Department, and the Zoning Department, which departments shall inspect the premises proposed to be operated as a massage establishment and shall make written recommendations to

the Municipal Clerk and Lumberton Township Committee concerning compliance with the codes under their jurisdiction.

- II. No massage and bodywork establishment shall be issued a permit or be operated, established or maintained in the Township unless an inspection by the Zoning Officer, Building Inspector, and Fire Inspector reveals that the establishment complies with the minimum requirements of the building and health codes for businesses operating in the Township of Lumberton.
- III. The floor plans for the proposed facility must be submitted to the Municipal Clerk as part of the application so they can be reviewed and approved by the Zoning Department and so that the Building Inspector can advise the applicant of potential problems. This requirement shall be performed any time the premises changes the floor plan.

§ 88-6 Operating Requirements

- I. All massage establishments and massage therapists shall comply with applicable state laws and regulations, including, but not limited to, N.J.S.A. 45:11-53 et seq., N.J.S.A. 45:11-68 et seq., and N.J.A.C. 13:37A-1.1 et seq.
- II. The massage and bodywork establishment shall display its state-issued license as well as the state-issued license of each and every massage therapist employed by the establishment in an open and conspicuous place of the premises of the establishment, in accordance with N.J.A.C. 13:37A-3.4.
- III. No owner, operator, or manager of a massage and bodywork establishment shall tolerate in his or her establishment any activity or behavior prohibited by the laws of the State of New Jersey, particularly, but not limited to, laws proscribing prostitution, indecency and obscenity, nor shall any owner, operator, or manager tolerate in his or her establishment any activity or behavior which violates this chapter.
- IV. No part of any quarters of a massage, and bodywork therapy establishment shall be used for or connected with a bedroom or sleeping quarters, nor may any person sleep in such massage and bodywork establishment. This provision shall not preclude the location of a massage therapy establishment in separate quarters of a building wherein a hotel or other separate business is located.
- V. Every portion of the massage and bodywork establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.
- VI. Hours of operation shall not commence prior to 9:00 a.m. and shall not extend beyond 10:00 p.m.

§88-7 Inspections

- I. The Zoning Department, and/or the Building Department and Police Department, shall, from time to time, at least twice a year, make an inspection of each massage and bodywork establishment granted a permit under the provisions of this chapter for the purpose of determining whether the provisions of this chapter are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. Township officials will schedule such appointments. It shall be unlawful for any permittee to fail to allow such inspection officer access to the premises or to hinder such officer in any manner. Township officials reserve the right to seek an administrative warrant to inspect the location where access has been denied.”

Section Two. Amendments to Chapter 98.

The Township amends Chapter 98 of the Township Code entitled “Background Checks” to remove references to the former Recreation Commission and re-assign the duties once provided by that organization. Chapter 98 to remain unchanged with the exception of the following:

1. The Township Committee amends the definition of “Review Committee” and “Youth Program” in Chapter 98-2 to read as follows:

“REVIEW COMMITTEE - A committee comprised of the Chief of Police (or the Chief’s designee), the Township Administrator (or the Administrator’s designee) and one Township resident appointed to the Review Committee by the Township Committee.”

“YOUTH PROGRAM - Any organized program with participants that are Lumberton residents under the age of 18 that: 1) are sponsored by the Township of Lumberton; 2) receive Township assistance for their programs and/or services; or 3) utilize Township facilities including buildings and/or fields of play on a regular or recurring basis.”

2. The Township Committee amends Section 98-3(E)(1) and (2) to read as follows:

“1. Each Youth Program, through a designated officer or leader, shall compile an annual roster of volunteers that are required to participate in the background check procedures of this article. The Youth Programs shall sign the roster certifying the accuracy and completeness of the roster and volunteers' names. The Youth Program shall maintain records including the names of all volunteers and the date of their last background check. These records shall be disclosed annually to the Review Committee to ensure that all volunteers are current with regard to the background check requirements.

2. Each Youth Program shall issue identification cards to all volunteers who have submitted to a background check and the identification cards must be in the possession of the volunteer whenever he or she is participating in any youth program activities. If an identification card is issued to a volunteer who is allowed to participate under the interim status provision of § 98-4B, and that volunteer later is deemed to have failed the background check, the Youth Program shall immediately revoke and confiscate the volunteer's identification card.”

3. The Township Committee amends Section 98-4(A) to read as follows:

“A. Written consent. Each person seeking to participate in a youth program as a volunteer shall execute a written consent in favor of both the Youth Program and the Township of Lumberton, its agents, servants and employees, authorizing said investigation, releasing the Township, and its agents, servants and employees from any liability arising from same, and holding them harmless. Failure to submit to said investigation will disqualify any such person from serving in the youth program.

4. The Township Committee amends Section 98-6(A) and (B) to read as follows:

“§ 98-6. Limitations on access and use of criminal history background information.

A. Limitation on access. Access to criminal history record information for non-criminal justice purposes, including licensing and employment, is restricted to authorized personnel of the Township of Lumberton, on a "need to know" basis, as authorized by federal or state statute, rule or regulation, executive order, administrative code, local

ordinance or resolution regarding obtaining and dissemination of criminal history record information obtained under this article.

B. Limitation on use. The Township, the Review Committee and the Recreation Organizations shall limit their use of criminal history record information solely to the authorized purpose for which it was obtained, and criminal history record information furnished shall not be disseminated to persons or organizations not authorized to receive the records. Any persons violating federal or state regulations governing access to criminal history record information may be subject to criminal and/or civil penalties. The results of background checks shall not be subject to public disclosure and shall be retained only for a period of three years.”

Section Three. Amendment to Chapter 119.

The Township amends Chapter 119 of the Township Code entitled “Clothing Bins” to provide consistency with N.J.S.A. 40:48-2.61 which was adopted by the State after the last adoption of this Chapter. Chapter 119 to remain unchanged with the exception of the following:

1. The Township Committee amends Section 119-3(A) to add the following new paragraphs (5) and (6) to read as follows:

“5. The manner in which the applicant anticipated any clothing or other donations collected via the bin would be used, sold, or dispersed, and the method by which the proceeds of the collected donations would be allocated or spent.

6. The name and telephone number of the bona fide office, required pursuant to subsection (5) above, of any entity which may share or profit from any clothing or other donations collected via the bin.”

2. The Township Committee amend Section 119-3(B) to lower the permit fee to read as follows:

“B. There shall be an annual twenty-five dollar (\$25) fee for each permit.”

3. The Township Committee amends Chapter 119-3(C) to clarify the length of time a permit is valid. Paragraph C shall read as follows:

“C. Any permit issued pursuant to the section shall remain valid for one year from the date of issuance. After the permit has expired, a permittee must either reapply for an annual renewal or remove the donation bin.”

4. The Township Committee amends Section 119-6(B) and (C) to establish greater due process protections consistent with state statute to read as follows:

“B. The Zoning Officer shall receive and investigate, within 30 days, any complaints from the public about the bin. Whenever it appears to the Zoning Officer that a person has engaged in, or is engaging in any act or practice in violation of section N.J.S.A. 40:48-2.61 et seq., the person who placed the bin shall be issued a warning, stating that if the violation is not rectified or a hearing with the appropriate municipal agency is not requested within 45 days, the bin will be seized or removed at the expense of the person who placed the bin, and any clothing or other donations collected via the bin will be sold at public auction or otherwise disposed of. In addition to any other means used to notify the person who placed the bin, such warning shall be affixed to the exterior of the bin itself.

C. In the event that the person who placed the bin does not rectify the violation or request a hearing within 45 days of the posting of the warning, the appropriate municipal agency may seize the bin, remove it, or have it removed, at the expense of the person who placed the bin, and sell at public auction or otherwise dispose of any clothing or other donations collected via the bin. Any proceeds from the sale of the donations collected via the bin shall be paid to the chief financial officer of the municipality.”

5. The Township Committee amends Section 119-7 regarding violations and penalties to read as follows:

“A. In addition to any other penalties or remedies authorized by the laws of this State, any person who violates any provision of P.L. 2007, c. 209 (C. 40:48-2.60 et seq.) which results in seizure of the donation clothing bin shall be:

1. Subject to a penalty of up to \$20,000 for each violation. The appropriate municipal agency may bring this action in the municipal court or Superior Court as a summary proceeding under the “Penalty Enforcement Law of 1999,” P.L. 1999, c. 274 (C. 2A:58-10 et seq.), and any penalty monies collected shall be paid to the chief financial officer of the municipality; and
2. Deemed ineligible to place, use, or employ a donation clothing bin for solicitation purposes pursuant to section 2 of P.L. 2007, c. 209 (C. 40:48-2.61). A person disqualified from placing, using, or employing a donation clothing bin by violating the provisions of P.L. 2007, c. 209 (C. 40:48-2.60 et seq.) may apply to the appropriate municipal agency to have that person's eligibility restored. The appropriate municipal agency may restore the eligibility of a person who:
 - a. Acts within the public interest; and
 - b. Demonstrates that he made a good faith effort to comply with the provisions of P.L. 2007, c. 209 (C. 40:48-2.60 et seq.) and all other applicable laws and regulations, or had no fraudulent intention.”

Section Four. Amendment to Chapter 136.

The Township repeals Chapter 136-2 in its entirety. The remainder of Chapter 136 is saved from repeal.

Section Five. Repeal of Chapter 197 entitled “Public Meetings.”

The Township repeals Chapter 197 of the Township Code entitled “Public Meetings” as that Chapter is antiquated and does not consider modern technologies which allow for instantaneous recording and live streaming of public meetings without interference to the governmental process.

ARTICLE II REPEALER, SEVERABILITY, AND EFFECTIVE DATE

A. Repealer. Any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.

- B. Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the Township Committee hereby declares its intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the Township to meet the goals of the Ordinance.
- C. Effective Date. This Ordinance shall take effect upon proper passage in accordance with the law.

LUMBERTON TOWNSHIP COMMITTEE

ACTION UPON INTRODUCTION:

COMMITTEE MEMBER	MOTION	2 nd	YES	ABSTAIN	NO	ABSENT
J. Dwyer		√	√			
K. Hatfield			√			
R. Tuno						√
K. Januseski	√		√			
S. Earlen			√			

ACTION UPON ADOPTION:

COMMITTEE MEMBER	MOTION	2 nd	YES	ABSTAIN	NO	ABSENT
J. Dwyer						
K. Hatfield						
R. Tuno						
K. Januseski						
S. Earlen						

CERTIFICATION

I hereby certify that the foregoing is a true copy of the ordinance that was introduced after first reading at a meeting of the Lumberton Township Committee held on June 27, 2019 and adopted after a public hearing at a meeting of the Lumberton Township Committee held on July 25, 2019.

Debra L. Shaw-Blemings, RMC
Lumberton Township Clerk

Introduced: June 27, 2019
Hearing: July 25, 2019
Adopted:

Published: July 8, 2019
Published: