

Ordinance: #1,607
Introduced: 11-18-19
Adopted: 12-02-19
Effective: 12-23-19

NOTICE OF INTRODUCTION

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Council of the Borough of Lincoln Park held on November 18, 2019, and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Borough Council to be held on NOVEMBER 18, 2019 at 7:30 p.m. or as soon thereafter as the Borough Council may hear this Ordinance at the Municipal Building, 34 Chapel Hill Road, Lincoln Park, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

An Ordinance Establishing Chapter 321, Of The Borough Code Regulating Massage, Bodywork and Somatic Establishments

WHEREAS, the Legislature has authorized municipalities to enact, amend and supplement ordinances as set forth in N.J.S.A. 40:48-2; and

WHEREAS, the Borough of Lincoln Park has determined that enactment of an ordinance to regulate and govern Massage, Bodywork and Somatic Establishments is in best interest of the public health, safety and welfare of the Borough of Lincoln Park; and

WHEREAS, the Borough desires to create Chapter 321 entitled Massage, Bodywork, Somatic Establishments of the Code of the Borough of Lincoln Park.

NOW, THEREFORE BE IT ORDAINED as follows:

Section 1. The Borough Code shall be amended to include a new Chapter 321, "Massage, Bodywork and Somatic Establishments" shall hereinafter be adopted to provide as follows:

§ 321-1. Preamble.

It is declared that the operation of a massage establishment, as defined in this chapter, is a business affecting the public health, safety and welfare of the Borough of Lincoln Park and its residents. In order to ensure the protection of the public health, safety and welfare, the Borough of Lincoln Park finds that it must license and regulate establishments that are the subject of this Ordinance in a manner authorized by and consistent with state statute and regulations.

§ 321-2. 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, Internet, Social Media platforms, including, but not limited to Facebook, Instagram, Twitter, and/or Craig's list.

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, bodywork and/or somatic establishment.

MASSAGE, BODYWORK and/or SOMATIC THERAPIES or MASSAGE SERVICES

— Any system of activity of structured touch which includes, but is 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, BODYWORK and SOMATIC ESTABLISHMENT — Any establishment, including, without limitation, a day spa, 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 and bodywork therapies" for compensation of any kind.

MASSAGE, BODYWORK and SOMATIC THERAPIST — A person licensed to practice massage and bodywork therapies pursuant to the provisions of the Massage and Bodywork Therapist Licensing Act, N.J.S.A. 45:11-53, et seq.

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 therefor.

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 breast or vulva of a female.

§ 321-3. Licensing of massage establishments; fees.

No massage establishment shall operate or provide massage services within the Borough of Lincoln Park without obtaining a Massage Establishment registration/license document from the Borough of Lincoln Park, Health Department in accordance with the provisions set forth hereunder. The Registration/License to be issued is specific to massage establishments and is independent from any certificate of occupancy, zoning approval or any other approval that may be required by other provisions of the Code of the Borough of Lincoln Park ("Borough Code") for the use of any premises as a massage establishment. The Registration/License to operate shall not be transferrable, must be renewed annually and shall continue in force until the last day of the 12th month following the issuance of the License.

A. Any person seeking to obtain a license to operate a massage establishment within the Borough of Lincoln Park must provide the following:

(1) A complete application, as provided by the Health Department of the Borough of Lincoln Park, accompanied by an application fee in the amount of \$500.00.

(2) The business name and type of ownership of the business, i.e., whether individual, partnership, corporation or any other form of organization. A copy of the entity's business registration certificate (BRC) issued by the Division of Revenue and Enterprise Services in the Department of the Treasury of the State of New Jersey must be provided.

(3) For each person having an ownership interest in the massage establishment:

(a) Name, address, date of birth and social security number; and

(b) A copy of a driver's license, passport or other government-issued photo identification. The copy shall be in color and of such quality so that the owner is readily identifiable from the photograph; and

(c) Completed Borough of Lincoln Park Police Department criminal background investigation application. At this time, the Borough will not collect a fee for the fingerprint record check.

(4) For each massage therapist who will provide massage and bodywork therapies for the massage establishment:

(a) Name, address, date of birth and social security number; and

(b) A copy of a driver's license, passport or other government-issued photo 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; and

(c) Completed Borough of Lincoln Park Police Department criminal background investigation; and

(d) A true copy of a valid and current certification or license issued by the New Jersey Board of Massage and Bodywork Therapy; and

(5) Proof of appropriate liability insurance coverage with a reputable company licensed by the State of New Jersey in an amount of not less than \$500,000.00 per occurrence and in the aggregate for all claims caused by personal injury;

(6) Satisfactory proof that all applicable building, zoning, health and fire code requirements have been met and inspection certificates issued.

B. Every massage establishment license issued pursuant to this chapter shall expire on the last day of the 12th month following the issuance of the license, unless sooner suspended or revoked, and shall be renewed upon compliance with the licensure requirements above, except that the renewal fee shall be \$250.00 annually. Licensees shall submit an application for renewal no later than sixty (60) days prior to the last day of the 12th month following the issuance of the license. Licensee applicants 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. Every such establishment existing as of the date this chapter becomes effective shall, within 60 days of adoption, comply with all of the requirements of this chapter, except that the fee to be paid shall be \$250.00.

C. Upon the effective date of this chapter, no new license shall issue for a massage establishment to be located within 1,000 feet of an existing massage establishment.

D. Licenses are nontransferable as to location and ownership. A new application, including payment of the applicable fee, must be submitted for any change of location and any change of ownership interest. In the event that a massage establishment is determined/found to be under new ownership/management and/or the Registration/License transferred in contravention of the within Chapter and/or applicable State Law, the Massage Establishment shall cease all operations and be closed until such time as all requirements of the within Chapter and State law are satisfied.

§ 321-4. Investigation.

A. When the application is properly completed and signed by the applicant, the original, duplicate and applicable fees shall be filed with and paid to the Health Department. The Health Department shall refer the duplicate to the Police Department, which 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 employee.

B. Upon completion of the criminal background investigation, the Police Department Officer in Charge, or designee, shall endorse the application, noting approval or disapproval, and return the application to the Health Department with all supporting information. Disapproval shall be based on information disclosed by the investigation and criminal background check indicating that the issuance of the license would not be in the best interest of the public.

C. No massage establishment shall be issued a license or be operated, established or maintained in the Borough of Lincoln Park unless an inspection by the Health Officer or his/her designee, Construction Official and Fire Inspector reveals that the establishment complies with the minimum requirements of the Building, Health and Fire Codes for businesses operating in the Borough.

D. If the Police Department approves the application and the Health Department has determined that the remaining requirements are satisfied, the Health Department shall cause the Registration/License to be issued.

E. The massage establishment shall immediately notify the Health Department of any change in massage therapists performing massage and bodywork therapies at the massage establishment. The information set forth in § 321-3A(4) shall be provided for each new massage therapist. The Health Department shall forward the information to the Police Department for investigation and criminal background check. The cost of the criminal background check shall be paid for by the applicant in advance. No massage establishment shall permit a massage therapist to perform massage and bodywork therapies at the massage establishment until the information set forth in § 321-3A(4) is provided to and approved by the Health Department in accordance with this Chapter.

§ 321-5. Display of licenses and insurance.

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 Registration/License issued by the Borough of Lincoln Park and the license or certificate issued

by the New Jersey Board of Massage and Bodywork Therapy for each massage therapist employed at the establishment. A two-inch-by-two-inch passport-sized color photo of the licensed massage or bodywork therapist must be affixed to the displayed license of each therapist employed by the establishment.

B. All therapists on site must have in their possession a valid driver's license, passport or other government-issued photo identification.

C. Proof of the liability insurance required by § 321-3A(5) must be conspicuously posted at the premises.

§ 321-6. 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 by a massage therapist unless specifically posted in accordance herewith.

B. All employees, including massage therapists, shall wear nontransparent outer garments.

C. The sexual or genital areas of patrons must be covered by towels, 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 7:00 a.m. to 10:00 p.m. or as otherwise established by any reviewing board considering an application for permit approval. While hours of operation may be more restrictive, they shall not be more expansive than those permitted herein.

F. Every massage establishment and massage therapist shall comply with the infection control precautions currently set forth at N.J.A.C. 13:37A-3.2 and as may be amended from time to time.

G. Every massage establishment and massage therapist shall comply with the sexual misconduct provisions currently set forth at N.J.A.C. 13:37A-3.5 and as may be amended from time to time.

H. Every massage establishment and massage therapist shall comply with the patient acknowledgement requirement currently set forth at N.J.A.C. 13:37A-3.7 and as may be amended from time to time.

§ 321-7. Advertising and solicitation practices.

A. No person shall advertise or offer to provide massage-related services for compensation within the Borough of Lincoln Park unless licensed as a massage establishment pursuant to this chapter.

B. All advertisements for massage services to be provided within the Borough of Lincoln Park shall include the massage establishment's name, address and telephone number.

§ 321-8. Responsibility of owners and license holders.

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.

§ 321-9. Inspections.

The Borough Police Department, Health Officer and his/her designee, Fire Chief, Construction Officer, Zoning Officer and/or Code Enforcement Officer may make inspections of any and all parts of the massage establishment to ensure compliance with the provisions of this chapter, the Borough Code, and the laws and administrative codes of the State of New Jersey on no less than an annual basis and shall be permitted to perform spot inspections without need of obtaining any approval of the operator of the business or an administrative search warrant.

§ 321-10. Facility requirements/recordkeeping.

In addition to the regulations set forth at N.J.A.C. 13:37A-3.1 et seq., every massage establishment must comply with each of the following minimum requirements:

A. Each massage and bodywork therapy area/room shall be equipped with a sink and an adequate area within each room for clients to store personal items.

B. No massage establishment shall knowingly serve any patron infected with any fungus or other skin infections, nor shall service be performed on any patron exhibiting skin inflammation or eruptions, provided that a duly licensed physician may certify that a person may be safely provided with massage or bodywork therapy, prescribing the conditions thereof.

C. Client records must be kept for each and every client who receives services from the massage establishment. These records shall include at a minimum an intake form filled out by each customer to include the customer's name, address, phone number, date of birth, date of service, the specific service received, the licensed therapist's full name and New Jersey State Massage and Bodywork Therapist License number, and the signature of the client. These records must be stored on the premises and available for review by the Health Department at all times for a period of not less than two years from the date the service was performed.

D. Signage specifying the age restriction and the required record keeping requirements must be posted in English, conspicuously displayed and clearly readable from the customer entrance of the establishment at all times.

§ 321-11. Sleeping quarters prohibited.

No part of any quarters of any massage establishment shall be used for or connected with any bedroom or sleeping quarters nor shall any person sleep in such massage establishment except for limited periods incidental to and directly related to a massage and bodywork therapy treatment or bath.

§ 321-12. Prohibited acts.

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

B. Any conviction of any employee of a massage establishment of a violation of the aforementioned statutes and codes shall devolve upon the owner or manager of such establishment, to the extent that it constitutes sufficient cause for the suspension or revocation of the establishment license.

C. The owner or licensee of the massage establishment shall not permit:

(1) Table showers.

(2) Ear candling.

(3) All procedures and services that involve ear picks, ear scoops or ear spoons.

(4) Cupping, or applying the open end of a glass vessel or vessel of another material onto the client's skin and utilizing an open flame to heat the vessel.

(5) Any activities or therapies that utilize any form of terrestrial or aquatic animals during therapy, including but not limited to fish foot spas.

(6) Any activities or therapies that utilize animal waste or products that contain animal waste as an ingredient.

(7) Colon cleansing.

D. Pest control chemicals or sprays are prohibited. Pest control services must be performed by NJDEP-licensed pest control contractors.

E. Laundering is restricted to only those linens and towels used within the operation and must be laundered in accordance with N.J.A.C. 13:37A-3.2(j). The laundering of personal clothing and/ or other items is prohibited. Personal clothing or other personal items may not be commingled with the linens or towels used in the operation nor shall personal clothing not specific to the operation be stored on the premises.

F. No bulk food storage or meal preparation is permitted on premises.

G. Personal effects of establishment owner(s) or employee(s) are not permitted on premises.

H. No one under 18 years of age shall be served unless accompanied by a parent or legal guardian.

I. Alcoholic beverages shall not be stored nor consumed on the premises.

§ 321-13. Revocation of license.

A. The Health Officer 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 Borough 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 Borough 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(s).

(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(s).

(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.

(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 Health Officer 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 10 days of the delivery of said notice, the licensee may appeal to the Borough Council to reinstate the license. The filing of such notice shall not stay any revocation of the license for the premises. The Borough Council shall hold a hearing within 321 days of receipt of a notice of appeal. Once the ten-day appeal period has passed, or if upon appeal to the Borough Council the license revocation is upheld, the massage establishment or individual will be barred from providing massage services within the Borough for a period of five years from the date and notice of License revocation.

§ 321-14. License renewal.

A. The annual renewal fee of \$250.00 for a massage establishment license shall be submitted to the Health Department by January 31st of the current year.

B. From the date of original issuance, each licensee shall be subject to periodic criminal background investigations by the Lincoln Park Police Department.

§ 321-15. Exemptions.

A. The requirements of this chapter shall have no application and effect upon any physician, surgeon, chiropractor, osteopath, nurse, nurse practitioner, physicians' 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.

C. The requirements of this chapter shall not apply to massage or physical therapy treatments given in the office of a licensed physician, chiropractor or physical therapist, or in a licensed medical center or hospital.

§ 321-16. Violations and penalties.

In addition to the revocation or suspension of the license granted under this chapter, any person and/or establishment violating any of the provisions of this chapter shall, upon conviction, be subject to the penalties provided by § 1-2 of the Borough Code.

§ 321-17. Enforcement agent.

The enforcement agent for the provisions of this chapter shall be the Health Officer or his/her designee.

§ 321-18. Existing Establishments and Practitioners.

All persons who operate a massage establishment and hold a license issued by the Borough of Lincoln Park must comply with the provision of this Chapter (including a complete criminal background check) within sixty (60) days of the effective date of this Chapter. All person(s) who are presently practicing as massage therapist(s) pursuant to a license issued by the Borough of Lincoln Park must become certified, if not presently certified, by the State of New Jersey pursuant to N.J.S.A. 45:11-53, et seq. and N.J.A.C. 13:37-16.1, et seq. and must present the certification issued by the State of New Jersey to the Health Officer of the Borough of Lincoln Park within one (1) year of the effective date of this chapter.

Section 2. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provision of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder of any portion thereof.

Section 3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect immediately after final passage and publication on the manner provided by law.

ATTEST:

Cynthia L. Sloane, RMC, Borough Clerk

Raymond Kerwin, Council President

Dr. David Runfeldt, Mayor

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