

**TOWNSHIP OF MANSFIELD
BURLINGTON COUNTY**

ORDINANCE 2021-35

**AN ORDINANCE OF THE TOWNSHIP OF MANSFIELD,
COUNTY OF BURLINGTON, AND STATE OF NEW
JERSEY AMENDING THE CODE OF THE TOWNSHIP OF
MANSFIELD, CHAPTER 65 "ZONING" TO CLARIFY THE
ZONES IN WHICH "MASSAGE ESTABLISHMENTS" ARE
A PERMITTED USE AND TO ADOPT AND CREATE A
NEW CHAPTER 40A OF THE CODE OF THE TOWNSHIP
OF MANSFIELD ENTITLED "MASSAGE
ESTABLISHMENTS"**

WHEREAS, the State of New Jersey has enacted the Massage and Bodywork Therapist Licensing Act, N.J.S.A. 45:11-53 et seq., to regulate the practice of massage and bodywork therapies and the establishment of clear licensure standards for massage and bodywork therapists; and,

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

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

WHEREAS, the New Jersey Board of Massage and Bodywork Therapy has adopted rules and regulations for the licensing of massage therapists, which may be found at N.J.A.C. 13:37A-1.1 et seq.; and,

WHEREAS, while 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 as provided under N.J.S.A. 45:11-78, a municipality may adopt an ordinance to regulate the licensure of massage establishments within its jurisdiction; and,

WHEREAS, the Township Committee of the Township of Mansfield finds and 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 Code of the Township of Mansfield requiring the licensing and regulation of massage establishments in the Township consistent with state statutes and administrative regulations.

NOW THEREFORE BE IT ORDAINED by the Township Committee of the Township of Mansfield, in the County of Burlington and State of New Jersey, as follows:

Section 1: The Code of the Township of Mansfield is hereby amended and supplemented so as to create and adopt a new Chapter 40A thereunder "Massage Therapists, as follows:

§40A-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 Township of Mansfield and its residents. In order to ensure the protection of that public health, safety and welfare, the Township of Mansfield finds that it must license and regulate such establishments in a manner authorized by and consistent with state statute and regulations.

§40A-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 AND BODYWORK THERAPIES OR MASSAGE SERVICES

Any system 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.

MESSAGE 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.

MESSAGE 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.

§40A-3 Licensing of Massage Establishments; Fees.

No massage establishment shall operate or provide massage services within the Township of Mansfield without obtaining a license from the Mansfield Board of Health established pursuant to Chapter 2, Section 2-13 of the Code of the Township of Mansfield. The 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 Township of Mansfield for the use of any premises as a massage establishment.

- A. Any person seeking to obtain a license to operate a massage establishment within the Township of Mansfield must provide the following:
 - (1) A complete application, as provided by the Board of Health, accompanied by an application fee in the amount of \$500.00.

- (2) The business name and type of ownership of the business entity seeking to be licensed, whether individual, partnership, corporation or any other form of organization. A copy of the entity's Business Registration Certificate (BRC) issued by the State of New Jersey Division 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,
 - (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. 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 and bodywork therapies for the massage establishment.
 - (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 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 December 31 of each 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 \$250.00 annually. Any licensee who fails to submit a timely renewal application shall be required to reapply as and be subject to the conditions and fees of an initial applicant. Any 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.
- C. Licenses are non-transferable 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.

§40A-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 Board of Health. The Board of Health shall refer the duplicate to the Police Department, 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 and bodywork therapies for the massage establishment.
- B. Upon completion of the criminal background investigation, the Police Department shall endorse the application, noting approval or disapproval, and forward the application to the Board of Health with 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 Township of Mansfield unless an inspection by the Zoning Official, Construction Official and Fire Inspector reveals that the establishment complies with the minimum requirements of the Building, Zoning and Fire Codes for businesses operating in the Township.
- D. If the Police Department approves the application and the Board of Health has determined that the remaining requirements are satisfied, the Board of Health shall cause said license to be issued.
- E. The massage establishment shall immediately notify the Board of Health of any change in massage therapists performing massage and bodywork therapies at the massage establishment. The information set forth in §40A-3A (4) shall be provided for each new massage therapist. The Board of Health 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 §40A-3A (4) is provided to the Board of Health.

§40A-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 license issued by the Township of Mansfield 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 2- inch by 2-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 §40A-3A (5) must be conspicuously posted at the premises.

§40A-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 that 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.

§40A-7 Advertising and Solicitation Practices.

- A. No person shall advertise or offer to provide massage-related services for compensation within the Township of Mansfield unless licensed as a massage establishment pursuant to this Chapter.

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

§40A-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.

§40A-9 Inspections.

The Police Department, Fire Chief, Construction Officer and Zoning Officer may make inspections of any and all parts of the massage establishment to ensure compliance with the provisions of this Chapter, the Code, of the Township of Mansfield 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.

§40A-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:

- (1) 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.
- (2) 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.
- (3) 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 Board of Health at all times for a period of not less than two (2) years from the date the service was performed.
- (4) 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.

§40A-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.

§40A-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.

§40A-13 Revocation of License.

A. The Board of Health 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 Mansfield 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 Mansfield 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.

(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 massage establishment or individual whose license is revoked will be barred from providing massage services within the Township of Mansfield for a period of five (5) years.

§40A-14 License Renewal.

A. The annual renewal fee of \$250.00 for a massage establishment license shall be submitted to the Board of Health by November 1 of the current year.

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

§40A-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.

§40A-16 Violations and Penalties. In addition to the revocation or suspension of any license granted under this Chapter, as set forth in Section 40A-13 above, any person and/or establishment violating any of the provisions of this Chapter shall be subject to the following penalties pursuant to N.J.S. 40:49-5 "Penalties for violations of municipal ordinances" being imprisonment for a period not to exceed ninety (90) days, or by a fine not to exceed two thousand dollars (\$2,000), or by a period of community service not exceeding ninety (90) days. Each and every day that a violation of this Chapter persists shall constitute a separate violation. To the extent that the conduct prohibited under this chapter also violates other provisions of the Township Code, these violations constitute separate offenses subject to the additional fines and penalties as prescribed.

SECTION TWO: Chapter 65 of the Code of the Township of Mansfield, entitled "Zoning", is hereby amended to adopt and add and/or repeal and replace the following sections.

- A. § 65-34. Conditional uses, C-2 Highway Commercial Zone, is hereby amended to adopt and add a new subsection (4) "Massage Establishments, subject to compliance with the conditions in Chapter 40A." to said Section and §65-35 Highway Commercial Zone, Accessory Uses, to add a new subsection E. "Massage Establishments" subject to compliance with the conditions in Chapter 40A."
- B. § 65-29. Permitted uses, C-1 Neighborhood Commercial Zone is hereby amended to adopt and add a new sub-section "DD. Massage Establishments, as a Conditional Use, subject to compliance with the conditions in Chapter 40A." and Section 65-30, C-2 Neighborhood Commercial Zone, Accessory Uses to add a new subsection C. "Massage Establishments" subject to compliance with the conditions in Chapter 40A."
- C. § 65-20. Permitted uses, HCC Homestead Commercial Center Zone, is hereby amended to adopt and add a new subsection T. "Massage Establishments, as a Conditional Use, subject to compliance with the conditions in Chapter 40A." to said Section, and §65-21, HCC Homestead Commercial Zone, Accessory Uses, to add a new subsection I. "Massage Establishments" subject to compliance with the conditions in Chapter 40A."

REPEALER, SEVERABILITY AND EFFECTIVE DATE

- A. Any and all Ordinances and provisions thereof inconsistent with the provisions of this Ordinance shall be and are hereby repealed to the extent of such inconsistency
- B. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision and the remainder of this ordinance shall be deemed valid and effective.
- C. This Ordinance shall take effect immediately upon final passage and publication according to law.

I, **LINDA SEMUS, RMC, CMR**, Township Clerk of the Township of Mansfield, County of Burlington, State of New Jersey, do hereby certify the foregoing to be a true and accurate copy of an Ordinance which was introduced on November 23, 2021 and duly adopted on second reading by the by the Township Committee of the Township of Mansfield on December 15, 2021.

Introduced: 11-23-2021
Adopted: 12-15-2021

LINDA SEMUS, RMC, CMR
Municipal Clerk

