

**ORDINANCE NO. 201 7-1182**

**AN ORDINANCE REGULATING MASSAGE ESTABLISHMENTS  
AND NON-CERTIFIED PRACTITIONERS THEREOF  
AND REPEALING ORDINANCE #2012-1119**

**BE IT ORDAINED** by the Mayor and Council of the Borough of Manville in the County of Somerset and State of New Jersey, as follows:

**SECTION 1. DEFINITIONS**

“Applicant” means any person who applies to the Borough of Manville for a permit to operate a Massage Establishment as defined herein.

“Committee” means the Massage, Bodywork and Somatic Therapy Examining Committee established pursuant to N.J.S.A. 45:11-53 et seq.

“Massage, bodywork and somatic therapies” or “massage, bodywork and somatic” means 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 purposes 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, bodywork and somatic therapist” means a person certified pursuant to the provisions of N.J.S.A. 45:11-53, et seq. and N.J.A.C. 13:37A-1.1, et seq.

“Massage Establishment” means any establishment having a fixed place of business where massage, bodywork and somatic services are provided for a valuable consideration.

“Permit” means the document issued by the Borough of Manville authorizing an applicant to operate and maintain a Massage Establishment and render massage, bodywork and somatic therapy in accordance with the provisions of this ordinance.

“Permittee” means any practitioner who holds a permit from the Borough of Manville authorizing the operation of a Massage Establishment in the Borough of Manville in accordance with the provisions of this ordinance.

“Person” means a natural person, partnership, association, company, corporation, organization, legal entity, or managing agent, servant, officer or employee of any of them.

## **SECTION 2. PROHIBITED CONDUCT**

A. No person shall operate a massage establishment without first having obtained a permit therefor in accordance with the provisions of this ordinance.

B. A permittee shall require that the permit be prominently displayed so that same is clearly visible to any patron receiving such services from a permittee.

C. No person shall render massage, bodywork or somatic services unless such person is licensed pursuant to N.J.S.A. 45:11-53 et seq.

D. No licensed provider of massage, bodywork or somatic therapies as licensed pursuant to N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37A-1.1 et seq. shall perform massage, bodywork and somatic therapies of any kind unless they are supervised by the permittee in accordance with this ordinance.

E. All permittees and the associates, agents or representatives thereof shall adhere to all standards and regulations applicable to under state and federal law.

## **SECTION 3. PERMIT REQUIRED FOR OPERATION OF MASSAGE ESTABLISHMENT ; PROCEDURE FOR PERMITTING**

A. A massage establishment license shall be granted to an applicant or other person only upon approval of an application therefor by the Mayor and Council. The application shall be filed with the Borough Clerk and a non-refundable application/license fee of \$250.00 shall be paid at the time of filing. The license shall be valid for the remainder of the calendar year, shall not be transferable, and shall be subject to annual renewal as of January 1 of each year. The non-refundable application/license fee shall not be pro-rated based upon the date of filing or date of approval. All applications shall be forwarded to the Borough agencies of Police, Health, Building, and Zoning for review and report to the Mayor and Council.

B. Any person desiring a massage, bodywork or somatic therapy establishment permit shall file a written application with the Borough Clerk's office on a form to be furnished by the Borough Clerk's office. The completed application shall be returned to the Borough Clerk's office for processing with the established inspection fee as required above.

C. In addition to the completed application, the applicant, who shall be a principal of the business, may be required to submit additional documentation, including but not limited to a sketch, floor plan, and/or building layout as applicable to the application. The application form shall contain the following information:

(1) The type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise.

(2) The name, style and designation under which the business is to be conducted.

(3) The business address and all telephone numbers, including facsimile, where business is to be conducted.

(4) A complete list of the names and addresses of all massage, bodywork and somatic therapists, along with proof of certification by the State of New Jersey pursuant to the provisions of N.J.S.A. 45:11-53 et seq., 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. It shall be the responsibility of the owner/operator to maintain an updated employee list and provide same to the Borough Clerk's Office. The Borough Clerk shall be notified in writing within seven days, transmitted by mail, email or facsimile, of any changes to the list. Said list shall also be made available during all inspections.

(5) The following personal information concerning the applicant, if an individual; concerning each stockholder holding more than 10% of the stock of the corporation, each officer and each director, if the applicant is a corporation; concerning the partners, including limited partners, if the applicant is a partnership; and concerning the manager or other person principally in charge of the operation of the business:

(a) The name, complete residence address, residence telephone number, mobile telephone number and email address.

(b) The two previous residential addresses immediately prior to the present residential address of the applicant.

(c) Copy of current driver's license or other government-issued photo ID.

(d) Two front-face portrait photographs taken within 30 days of the date of the application and at least two inches by two inches in size (passport size).

(e) The massage therapy or similar business history and experience, including, but not limited to, whether or not such a person has previously operated in this or another municipality or state under a license or permit which was ultimately denied, revoked or suspended and the reason therefor and the business activities or occupations subsequent to such action or denial, suspension or revocation.

(f) All criminal convictions other than misdemeanor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and circumstances thereof. The applicant shall execute a waiver and consent to allow a fingerprint and criminal background check by the Police Department.

(g) The submitted application must be accompanied by a copy of the signed lease for the property location where the proposed massage establishment will be in operation. The applicant must be listed as the lessee on the lease.

(h) The names and addresses of three adult residents of Somerset County, or the abutting counties of Hunterdon, Mercer, Middlesex or Union, who will serve as character references. These references must be persons other than relatives and business associates.

D. All initial applications for a massage, bodywork or somatic therapy establishment permit shall be accompanied by an application for a zoning permit or change of tenant occupancy. The Borough Clerk shall refer the application to the Construction Code Department, the Fire Prevention Department, the Police Department, the Health Department, and the Zoning/Planning Department, which departments shall inspect the premises proposed to be operated as a massage establishment and shall make written recommendations to the Borough Clerk concerning compliance with the codes that they administer.

E. No massage, bodywork or somatic therapy establishment shall be issued a permit or be operated, established or maintained in the Borough unless an inspection by the Health Department, Construction Code Department and Fire Prevention Division reveals that the establishment complies with the minimum requirements of the Building, Fire and Health Codes for businesses operating in the Borough of Manville. In addition, the establishment must comply with each of the following minimum requirements:

(1) All massage tables, bathtubs, shower stalls, steam or bath areas and floors shall have surfaces which may be readily disinfected, and shall be maintained in a sanitary condition and regularly cleaned and disinfected by a method approved by the Health Department.

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

(3) The owner or operator shall submit a disinfection/sterilization plan for non-disposable instruments and materials used in administering massages, bodywork and/or somatic therapies to the Health Department for approval and must operate in compliance with an approved plan. Such non-disposable instruments and materials shall be disinfected after use on each patron and stored in a clean and sanitary manner.

(4) A shower area for clients shall be provided within the facility; such area shall be maintained in a clean and sanitary condition at all times.

#### **SECTION 4. REVIEW AND APPROVAL OF PERMITS; VALIDITY/TRANSFERABILITY**

All permit applications under this chapter are subject to an administrative review. Upon completion of the administrative review, a written report shall be filed with the Borough Clerk. If all the requirements of this chapter have been fully satisfied, the Borough Clerk shall then approve said permit. Any permit granted under this chapter shall only be valid to the person to whom it was granted and shall not be transferable.

#### **SECTION 5. REGULATION OF BUSINESS**

Permittees shall be responsible for all activities conducted on the permitted premises. In the event any violation of the provisions of this ordinance or the provisions of applicable statutory, or other rules and regulations of the State of New Jersey referenced in this ordinance occur at a massage establishment, the license shall be subject to suspension by the Mayor and Council following notice and an opportunity for the licensee to be heard.

In the event of any violation of the provisions of this ordinance or the provisions of applicable statutory or other rules and regulations of the State of New Jersey referenced in this ordinance by a permittee, the permit shall be subject to suspension or revocation by the Mayor and Council following notice and an opportunity for the licensee to be heard.

Action against a licensee or permittee under this section shall be in addition to, and not in lieu of, the penalties provided for in Section 15, hereof.

#### **SECTION 6. OPERATING REQUIREMENTS**

A. Every portion of the massage, bodywork or somatic therapy establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.

B. Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.

C. All employees, including massage, bodywork or somatic therapists, shall be clean and wear clean, nontransparent outer garments. Dressing rooms must be available on the premises. Doors to such dressing rooms shall open inward and be self-closing. If the dressing room is also used as the therapy/massage room, then adequate procedures shall be in place to safeguard the privacy of the client. In no case shall these doors be locked when both a client and any employee are present.

D. 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.

E. The sexual or genital area of patrons must be covered by towels, cloths or undergarments when in the presence of an employee or massage, bodywork or somatic therapist.

F. It shall be unlawful for any person in a massage establishment knowingly to place his or her hand upon or touch with any part of his or her body, to fondle in any manner or to massage a sexual or genital area of any other person unless said therapy is prescribed by a licensed physician.

G. No massage, bodywork or somatic therapist, employee or operator shall perform, or offer to perform, any act which would require the touching of the patron's sexual or genital area unless said

therapy is prescribed by a licensed physician.

H. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities 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 shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and showers shall be thoroughly cleaned after each use. When carpeting is used on the floors, it shall be kept dry.

I. Oils, creams, lotion and other preparations used in administering massage, bodywork or somatic therapies shall be kept in clean, closed containers or cabinets.

J. Animals, except for handicap service animals, or when they are clients, shall not be permitted in the massage work area.

K. Each massage, bodywork and somatic therapist shall wash his or her hands in hot running water, using proper soap or disinfectant, before administering a massage, bodywork or somatic therapy to each patron. All restroom and workstation hand wash sinks are to be stocked with liquid hand soap and paper towels. Dispensers for soap and paper towels are to be wall-mounted. Restroom hand wash sinks must have signs conspicuously displayed with the following language: "Employees must wash hands after using the restroom." If hand-washing facilities are not available, the therapist shall disinfect their hands with bactericidal agent.

L. No minors shall be allowed in the facility other than the waiting area which shall be physically separate from the therapy areas, except when the minors are clients and accompanied in all areas by a parent or guardian.

M. 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 a massage, bodywork or somatic therapy, prescribing the conditions thereof.

N. A written disinfection plan for all linens, towels and reusable instruments used by the establishment must be approved by the Health Department, kept on site and available for review by the inspecting official at all times. The establishment must operate in conformance with the approved plan at all times.

O. 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 their name, address, phone number, date of birth, date of service, the specific service they've received, the licensed therapist's full name, their 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 by the Health Department at all times for a period of not less than three years of the date the service was performed.

P. 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.

Q. Employees shall at all times provide access to a sanitary restroom for clients of the massage establishment.

R. The massage establishment shall conform to and observe all applicable rules, regulations and prohibitions set forth by the New Jersey Board of Cosmetology.

## **SECTION 7. ENFORCEMENT AGENTS; RIGHT TO INSPECT**

A. The enforcement agents for massage, bodywork and somatic therapy permits shall be the Health Officer, Police Chief, Fire Prevention Director and/or their designees.

B. The Health Department and/or the Zoning Inspector and/or Fire Inspector and Borough Police Department shall, from time to time, at least once a year, make an inspection of each massage, bodywork or somatic therapy 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. 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.

## **SECTION 8. SLEEPING QUARTERS**

No part of any quarters of any massage, bodywork or somatic therapy establishment shall be used for or connected with any bedroom or sleeping quarters, nor shall any person sleep in such massage, bodywork or somatic therapy establishment except for limited periods incidental to and directly related to a massage, bodywork or somatic therapy treatment or bath. This provision shall not preclude the location of a massage, bodywork or somatic therapy establishment in separate quarters of a building housing a hotel or other separate businesses or club or residence if the same has been approved by the Zoning Department or granted a variance by the Manville Borough Zoning Board of Adjustment.

## **SECTION 9. PROHIBITED ACTS**

A. No owner or manager of a massage, bodywork or somatic therapy 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 exclusive of, 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; laws relating to the commission of adultery; and laws proscribing fornication; nor shall any owner or manager tolerate in his or her establishment any activity or behavior which violates this chapter.

B. Any conviction of a bodywork or somatic therapy establishment, or any employee thereof, of a violation of the aforementioned statutes and codes shall devolve upon the owner or manager of the establishment, it being specifically declared that, following such a conviction, the owner or the manager of the establishment shall be prosecuted as an accessory to such a violation, and the required permits will be automatically revoked.

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

- (1) Ear candling.
- (2) All procedures and services that involve ear picks, ear scoops or ear spoons.
- (3) 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.
- (4) Any activities or therapies that utilize any form of terrestrial or aquatic animals during therapy, including but not limited to fish foot spas.
- (5) Any activities or therapies that utilize animal waste or products that contain animal waste as an ingredient.
- (6) 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. The laundering of personal clothing and/or 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.

## **SECTION 10. DENIAL, SUSPENSION OR REVOCATION OF PERMIT**

A. Establishment permits issued under this chapter may be denied, suspended or revoked by

the Chief of Police, after notice and a public hearing. Reasons for denial, suspension and revocation of an establishment permit include but are not limited to:

(1) Fraud, misrepresentation or false statement in the application for the establishment permit;

(2) Fraud, misrepresentation or false statement made while operating the licensed business in the Borough;

(3) Any violation of this chapter;

(4) Conviction 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;

(5) Conducting the permitted business within the Borough in an unlawful manner or in such a manner as to constitute a danger to the health, safety or general welfare of the public.

(6) The owner and/or operator or any employee refuses to permit any duly authorized Borough police officer or Health Official to inspect the premises or the operations therein.

(7) The conviction of any employee of the establishment for a violation of the prohibited acts set forth in § 230-12 shall create a rebuttable presumption that the owner/operator had actual or constructive knowledge of the violation resulting in the conviction and shall constitute cause for the suspension or revocation of the establishment permit.

B. Notice of the hearing for the denial, suspension or revocation of a permit shall be given in writing, setting forth specifically the grounds therefor and the date, time and place of the hearing. Such notice shall be given personally or mailed to the permittee at the address provided on the application or permit at least five days prior to the date set for the hearing. The Borough Administrator shall serve as hearing officer for any hearing pursuant to this subsection.

#### **SECTION 11. EXEMPTIONS**

The requirements of this Ordinance 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 or to any person performing massage, bodywork and somatic services under the supervision of such licenses person. This ordinance shall not apply to any school certified to teach massage by the New Jersey Department of Education.

#### **SECTION 12. CONSTRUCTION**

Where consistent with the context in which used in this ordinance, words importing the singular shall include the plural; words importing the plural shall include the singular; and, words importing one gender shall include all other genders.

#### **SECTION 13. REPEALER**

The provisions contained herein supersede Ordinance No. 2012-1119 of the Borough Manville in the County of Somerset of the State of New Jersey of July 9, 2012. Should any provision of this ordinance be inconsistent with the provisions of any other prior ordinances, the inconsistent provisions of said prior ordinances are hereby repealed, but only to the extent of such inconsistencies.

#### **SECTION 14. SEVERABILITY**

In the event that any provision of this ordinance, or the application thereof to any person or circumstances is declared invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other provision or application of this ordinance which may be given effect, and, to realize this intent, the provisions and applications of this ordinance are declared to be severable.

#### **SECTION 15. PENALTY**

In addition to the suspension of the operating permit pursuant to Section 10, upon conviction for violation of any provision of this ordinance the maximum penalty shall be one (1) or more of the following: a fine not to exceed Two Thousand (\$2,000.00) Dollar, imprisonment in the County Jail for a period not to exceed ninety (90) days, and/or a period of community service not to exceed ninety (90) days. Each and every day upon which a violation of any provision of this ordinance exists shall constitute a separate violation.

#### **SECTION 16. PURPOSE OF CAPTIONS**

Captions contained in this ordinance have been inserted only for the purpose of facilitating reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

**SECTION 17. EFFECTIVE DATE**

This ordinance shall be effective upon final adoption, approval and publication in accordance with law.

Borough of Manville,



Richard M. Onderko, Mayor

ATTEST:



Patricia A. Zamorski, Borough Clerk



ORDINANCE #2017 -1182

FIRST READING:

ROLL CALL

Introduced	Seconded	Council	Yes	No	Abstain	Absent
	√	SZABO	√			
		CAMACHO	√			
		MAGNANI	√			
		PETROCK	√			
√		PETRONE	√			
		SKIRKANISH	√			
		MAYOR ONDERKO				

**PASSED** this 13<sup>th</sup> day of March, 2017.



Attest:

Patricia A. Zamorski, Borough Clerk

SECOND READING:

ROLL CALL

Introduced	Seconded	Council	Yes	No	Abstain	Absent
	√	SZABO	√			
		CAMACHO	√			
		MAGNANI	√			
		PETROCK	√			
		PETRONE	√			
√		SKIRKANISH	√			
		MAYOR ONDERKO				

**ADOPTED** this 27<sup>th</sup> day of March, 2017.



Attest:

Patricia A. Zamorski, Borough Clerk

