

## PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Smithtown, Suffolk County, State of New York will meet at the Victor T. Liss Board Room, Town Hall, 99 West Main Street, Smithtown, New York on Tuesday, August 13, 2019 at 2:00 p.m. time then in effect to consider a proposed Town Code amendment to add Chapter 206 of the Code of the Town of Smithtown entitled "Massage Establishments."

### **Proposed Local Law #4-2019** **Chapter 206. Massage Establishments.**

Additions indicated by underlines.

Deletions indicated by ~~strikeouts~~.

#### **Chapter 206. Massage Establishments.**

##### **§206-1. Definitions.**

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

##### **EMPLOYEE**

Any individual, other than a massage practitioner/masseur, who renders any service in connection with the operation of a massage business and receives compensation from the operator of the business or patrons.

##### **MASSAGE**

Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft pads of the body with the hands or with the aid of any mechanical electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, lotions, ointments, or other similar preparations.

##### **MASSAGE ESTABLISHMENT**

A fixed place of business where more than one person engages in or carries on, or permits to be engaged in or carried on, the practice of massage.

##### **MASSAGE PRACTITIONER/MASSEUR**

Any individual who, for any monetary consideration whatsoever, engages in the practice of massage. "Massage practitioner" and "masseur" shall include all massage practitioners and masseurs.

## **PATRON**

Any individual who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.

## **LICENSEE**

The owner, proprietor, manager, or operator of a massage establishment, outcall massage service, or solo practitioner massage establishment.

## **PERSON**

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

## **RECOGNIZED SCHOOL FOR MASSAGE**

A school or institute of massage therapy with a program registered by the Department of Education of the State of New York, or its substantial equivalent in both subject matter and extent of training, provided that the program in such school or institute shall consist of classroom instruction of a total of not less than 500 hours in subjects satisfactory to the Department and upon completion must: pass an examination satisfactory to the State Board for Massage Therapy and in accordance with the Commissioner's regulations.

## **SOLO PRACTITIONER MASSAGE ESTABLISHMENT**

A fixed place of business where a person holding a Massage Practitioner/Masseur license engages in or carries on the practice of massage. Said fixed place of business may be shared by two to four licensed massage practitioners or masseurs, or two to four licensed massage practitioners or masseurs and one or more health or healing arts practitioners, except as otherwise provided by law.

### **§206-2. Licensing; location; standards and conditions.**

- A. The fee for a license hereunder shall be \$750 for the first year and \$250 annually thereafter. The fee shall be payable to the Town Clerk. Any person desiring a license for a Massage Establishment shall file a written application with the Town of Smithtown Department of Public Safety on a form to be furnished by the Department. The application shall be accompanied by the fee and shall furnish the following:
- (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 or practice is to be conducted.
- (3) The business address and all telephone numbers where the business is to be conducted.
- (4) A complete list of the names and residence addresses of all massage practitioners/masseurs and employees in the business and the name and residence addresses of the manager or other person principally in charge of the operation of the business.
- (5) Proof of general liability insurance.
- (6) The following personal information concerning the applicant, if an individual, and concerning all stockholders holding more than 10% of the stock of the corporation, all officers, directors, partners, limited partners, managers or other persons principally in charge of the operation of the business:
  - (a) Name, complete residence address and residence telephone numbers.
  - (b) The two previous addresses immediately prior to the present address of all persons.
  - (c) Proof of age.
  - (d) The massage or similar business history and experience, including but not limited to whether or not such person or persons in previously operating in this Town and State or any other Town or State under license or permit has had such license or permit denied, revoked or suspended and the reason therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation.
  - (e) All criminal convictions other than misdemeanor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and the circumstances thereof.
  - (f) Diploma, certificate or other written proof of graduation from a recognized school by the person who shall be directly responsible for the operation and management of the massage business.
  - (g) Authorization for the Town, its agents and employees to see information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.

- (h) The names and addresses of three residents of the County who will serve as character references. These references must be persons other than relatives and business associates.
- (i) Written declaration by the applicant, under penalty of perjury, that the foregoing information contained in the application is true and so correct, said declaration being duly dated and signed in the Town.

B. No massage establishments may be open, operate, exist or be occupied within the Town of Smithtown, unless a license shall first have been obtained for such establishment from the Town Clerk's office and:

- (1) The massage establishment and any massage practitioner/masseur working or practicing or occupying the establishment has first obtained a license pursuant to New York State Education Law Article 155, after graduation from a recognized school for massage; and further provided that
- (2) The use is so located that the premises upon which it is conducted are not less than 1,000 feet from the premises of any other massage establishment; and further provided that
- (3) The following standards and conditions are met:
  - (a) The hours of operation of the massage activity shall be limited to from 8:00 a.m. to 9:00 p.m.;
  - (b) There shall be no outdoor activity associated with the massage activity or establishment;
  - (c) All refuse, garbage, waste, solid or otherwise, shall be properly disposed of, laundry shall be changed after each massage/client, laundry shall be cleaned on a daily basis during the days the establishment is in operation, all rooms, tables, etc., shall be sanitized daily, and all massage practitioners shall sanitize their hands prior to performing a massage; and
  - (d) There shall be no alcoholic beverages served on the premises;
  - (e) Change in ownership or change in operation of the massage establishment requires a new license and shall be required to meet these standards and conditions.

C. All premises used by licensees shall be periodically inspected by the Director of the Department of Public Safety or his authorized representatives for safety of the structure and adequacy of plumbing, ventilation, heating and illumination. All equipment used in the massage operation shall be maintained in a clean and sanitary condition. Towels, linens and items for personal use of operators and patrons shall be clean and freshly

laundered. Towels, cloths and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets, provided that such paper is changed for every patron. No massage service or practice shall be carried on within any cubicle, room, booth or any area within a massage establishment which is fitted with a door capable of being locked. Nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises nor to preclude authorized inspection thereof.

D. Any individuals who engage in the practice of massage shall first apply for a Massage Practitioner/Masseur's License by filing a written application with the Town of Smithtown Public Safety Department on a form to be furnished by the Department. The applicant shall tender with the application a license fee of \$25 and furnish the following:

- (1) The business address and all telephone numbers where the individual will be practicing massage.
- (2) The following personal information:
  - (a) Name, complete residence address and residence telephone numbers.
  - (b) The two previous addresses immediately prior to the present address of the applicant.
  - (c) Proof of age.
  - (d) All criminal convictions other than misdemeanor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and the circumstances thereof.
  - (e) Diploma, certificate or other written proof of graduation from a recognized school where the theory, method, profession or work of massage is taught.
  - (f) License to practice massage in the State of New York.
  - (f) Authorization for the Town, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.
  - (g) Written declaration by the applicant, under penalty of perjury, that the foregoing information contained in the application is true and correct, said declaration being duly dated and signed in the Town.

### **§206-3. Exemptions.**

Nothing contained in this chapter shall be construed to prohibit:

- A. The practice of massage therapy by any person who is authorized to practice medicine, nursing, osteopathy, physiotherapy, chiropractic, or podiatry in accordance with the provisions of Education Law §7805.
- B. The practice of that massage which is customarily given in barber shops or beauty parlors for the purpose of beautification by any licensed barber or beauty culturist.
- C. The practice of massage therapy by any person employed in a medical institution licensed or chartered by the State of New York, provided that such person is under the on-site supervision of a person licensed to practice massage therapy or authorized to practice massage therapy by Subsection A of this section or by any person enrolled in a program of a school or institute of massage therapy registered by the Department, or enrolled in a program which satisfies the requirements of Education Law §7804, provided that such person is under on-site supervision of a person licensed to practice massage therapy or authorized to practice massage therapy by Subsection A of this section.
- D. The practice of massage therapy by any person duly employed as a trainer by a professional athletic association, club or team, or as a member of the physical education department of an accredited university, college or high school.
- E. The practice of massage therapy by any person employed by a corporation or association organized exclusively for the moral or mental improvement of men, women or children.
- F. Where the only massage service provided is a chair massage, such service is visible to the public, and customers are fully-clothed at all times, said premises shall not be considered a massage establishment.

#### **§206-4. Revocation of license.**

- A. The Town Clerk may revoke a license or approval issued under the provisions of this chapter in the following instances:
  - (1) Where he or she finds that there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the massage establishment license was based; or
  - (2) Where he or she finds that the massage establishment license was issued in error and should not have been issued in accordance with applicable law; or
  - (3) Where he or she finds the work performed under the massage establishment license is not being performed in accordance with the provisions of the application, plans or specifications; or
  - (4) Where he or she finds the licensee fails or refuses to comply with a stop-work order issued by the Building Inspector; or

- (5) Where he or she finds that the licensee's New York State professional license has been revoked, annulled, or suspended by the Board of Regents; or
  - (6) Where he or she finds that the licensee has violated any of the provisions of this Chapter; or
  - (7) Where he or she finds the licensee has been issued and/or any other person who is directly or indirectly engaged in the management and operation of the massage establishment has been convicted of:
    - (a) A felony;
    - (b) An offense involving sexual misconduct with children;
    - (c) Soliciting for a prostitute, pimping, prostitution, or misdemeanor involving moral turpitude.
- B. Such revocation shall take place after notice to the applicant and an opportunity for the applicant to be heard by the Town Clerk or his/her designee.
- C. No fees, as provided for pursuant to §206-2 of this Code, shall be refunded after the revocation of a massage establishment license.

**§206-5. Penalties for offenses.**

Any person, firm or corporation violating any of the provisions of this chapter shall be fined not more than \$500 or be imprisoned for not more than 15 days, or both, for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

**§206-6. When effective.**

This local law shall take effect on January 1, 2020.

Dated: July 16, 2019

BY ORDER OF THE TOWN BOARD  
OF THE TOWN OF SMITHTOWN  
VINCENT PULEO  
TOWN CLERK