

**TOWN OF WEST NEW YORK  
COUNTY OF HUDSON**

**ORDINANCE #26/15**

**AN ORDINANCE AMENDING CHAPTER 248 OF THE CODE OF THE TOWN OF  
WEST NEW YORK (MASSAGE PARLORS)**

**WHEREAS**, the Town of West New York Health Department was established pursuant to N.J.S.A. 26:3-1;

**WHEREAS**, pursuant to N.J.S.A. 26:3-1, the Health Department may make amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good of government, order and protection of person and property, and for the preservation of public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law;

**NOW THEREFORE BE IT ORDAINED** by the Mayor and Board of Commissioners of the Town of West New York, County of Hudson, State of New Jersey, that Chapter 248 of the Code of the Town of West New York shall hereby be repealed and the below will substitute therefore as follows:

**§ 248-1. Findings of fact.**

The Mayor and Board of Commissioners of the Town of West New York hereby find as a fact that the operation of any establishment, public or private, as a massage parlor or bath parlor or any similar or combination type of business where physical contact with the recipient of the services provided is by a person of the same or opposite sex, which physical contact induces or results in sexual contact, behavior or conduct, proscribed or otherwise, is a matter of public concern since the same affects the general health and welfare of the citizens of this municipality. The provisions hereinafter enacted and described are deemed to be a necessity in the public interest, and these findings of fact and description of legislative intent are hereby declared as a matter of legislative determination.

**§ 248-2. Certain acts prohibited.**

It shall be unlawful for any person, as defined herein, to:

- A. Operate any establishment, regardless of whether the same is a public or private facility, as a massage parlor or bath parlor or any similar or combination type of business where physical contact with the recipient of the services offered is provided by a person of the same or opposite sex,

which said physical contact induces or results in sexual contact, behavior or conduct, proscribed or otherwise.

- B. Permit the use or occupation of any building, structure or premises for the prohibited purposes described in § 248-1 of this chapter.
- C. A licensee and/or employee shall not perform:
  - (1) Colonic irrigations;
  - (2) Prostate massages;
  - (3) Vaginal or penile massages;
  - (4) Rectal massages;
  - (5) Animal therapies prohibited by the Veterinary Medical Act, N.J.S.A. 45:16-1 et seq.;
  - (6) Any application of electrical current to the body (Transcutaneous Electronic Nerve Stimulation, TENS machine);
  - (7) Ultrasound therapy; and
  - (8) Diagnosis of illness, disease, impairment or disability.

### **§ 248-3. Definitions.**

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

#### **AGENT**

Any and all persons, other than the massage practitioner(s) and employee(s), who are authorized to act for or in place of the licensee, business(es), practitioner(s) and/or employee(s).

#### **EMPLOYEES**

Any and all persons, other than the practitioner(s), who work for a business licensed pursuant to this chapter, who receive compensation directly from the licensee and who have no physical contact with the patrons.

#### **LICENSE or LICENSED**

Shall be used as that term is used in N.J.A.C. 13:37A-1.2.

#### **LICENSEE**

The operator of a massage business and/or a massage practitioner, who will receive money or any other consideration therefor and who has a license issued pursuant to this chapter.

#### **MASSAGE**

Massage, bodywork, pressure and somatic therapy. Those terms shall be used herein as those terms are used in N.J.S.A. 45:11-55 et seq. and this chapter.

## **MASSAGE, BODYWORK, PRESSURE, SOMATIC THERAPIES**

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 techniques and use of visual, kinesthetic, auditory and palpating skills to assess the body for purposes of applying therapeutic massage, bodywork, pressure 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 application of herbal or topical preparations not classified as prescribed 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 purposes of promoting and maintaining the health and well-being of the client. Massage, bodywork, pressure and somatic therapies do not include the practice of medicine, surgery, dentistry, osteopathy, chiropractic, physical therapy or other medical or surgical practices as defined in Title 45, Chapter 9, of New Jersey Statutes Annotated or to licensed nurses acting under the direct prescription and direction of said practitioners. Massage, bodywork, pressure and somatic therapies do not include massage of the scalp, hands or feet by a hair or nail salon or chair massage of arms, neck and shoulders in an open room or area where other business is conducted, or certificated therapeutic methods that are employed when the patron is fully clothed.

## **MASSAGE BUSINESS(ES)**

Any establishment located in a fixed place of business on a nonresidential property owned, leased, operated or controlled by any person, firm, association or corporation which engages in or carries on, or permits to be engaged in or carried on, any of the massage activities defined in this chapter. This includes any establishment engaged in or carrying on or permitting any combination of a massage, bodywork, pressure and/or somatic therapy and bathhouse establishment.

## **MASSAGE PRACTITIONER(S)**

Any person who holds a certificate as defined by this chapter who, for any consideration whatsoever, engages in the practice of massage, bodywork, pressure and/or somatic therapy as herein defined, including but not limited to subcontractors, subtenants or temporary employees certified by the State of New Jersey.

## **MASSAGE WORK AREA**

Any room, floor or section of a massage business where massage, bodywork, pressure and/or somatic therapies as herein defined are carried out.

## **PATRON**

Any person who receives a massage, bodywork, pressure and/or somatic therapies under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.

## **PERSON**

Any individual, firm, member of a firm, partnership, member of a partnership, corporation or any officer, director or stockholder of such corporation, a voluntary association or incorporated association. Persons shall specifically include and apply to individual owners of massage businesses, as well as the entity(ies).

### **§248-\_\_\_\_. License required.**

- A. Massage business(es). No persons shall operate a business engaged in the provision of massage, bodywork, pressure or somatic therapy services unless such person has first obtained a valid license for such business from the Town of West New York's Health Department in accordance with the terms and provisions of this chapter. Each applicant shall be fingerprinted. Fingerprints so furnished shall become a part of the application. In the event of a partnership, all partners, and in the event of a corporation, the president, vice-president, secretary and treasurer, shall be required to submit the above-mentioned sets of fingerprints, which fingerprints so taken shall be submitted to the Police Director/Chief of Police for comparison and record. The number of licenses issued shall be limited as follows:
- (1) The Town of West New York Health Department shall issue a license to operate upon satisfaction by the applicant that he or she has met all the requirements of N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37A-1.1 et seq.
- B. Massage practitioner. No person shall engage in providing massage services unless such person has first obtained a valid massage practitioner license issued by the Town of West New York Health Department pursuant to the provisions of this chapter and is certified by the State of New Jersey pursuant to N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37A-1.1 et seq.
- (1) The provision of massage services shall be limited to licensed medical centers, hospitals, sanitariums or the duly licensed office of a physician, osteopath, chiropractor, physical therapist or the office of a duly licensed massage business, as defined herein.
  - (2) No person other than a licensed and state-certified massage practitioner shall have any physical contact with patients or persons within the office of said physician, osteopath, chiropractor, physical therapist or massage business.

- (3) The Town of West New York Health Department shall issue a license to practice upon satisfaction by the applicant that he or she has met all the requirements of N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37A-1.1 et seq.

**§ 248-\_\_\_\_. Licensing Fee.**

- A. Every applicant for a massage practitioner license and/or a massage business license pursuant to this chapter shall file annually a complete application with the Town of West New York Health Department as set forth in this chapter and pay an annual filing fee as follows:
  - (1) For a massage business licensed pursuant to this chapter, the fee shall be in accordance with Chapter 186 of the Code of the Town of West New York.
  - (2) For each massage practitioner licensed pursuant to this chapter, the fee shall be in accordance with Chapter 186 of the Code of the Town of West New York.
  - (3) All fees are nonrefundable. Fees are annual.
  - (4) Any changes in ownership shall require a new application and license with the payment of the fees therefor.
- B. If at any time after the initial license is granted additional practitioners begin providing services at any massage business, all of the information required herein must be submitted to the Town of West New York Health Department prior to the massage practitioner providing services and the additional fee must be paid.
- C. In addition to the above, each massage practitioner and massage business applicant must pay the fee required to obtain a criminal background check.

**§ 248-\_\_\_\_. Application/renewal for practitioner license and/or business license.**

- A. Each massage business must be licensed and each massage practitioner must be licensed. There shall be a separate massage business license and a separate massage practitioner license.
- B. Each application for a license or renewal thereof, either to operate a massage business or to engage in the business of massage or to be employed as a massage practitioner, shall be approved by the governing body before any license is issued. First-time applicants for any licensure must be fingerprinted and photographed in accordance with the terms and provisions of this chapter and the procedures established by the Town of West New York Health Department. The governing body shall not approve such

application if, on the basis of the criminal record of the applicant or of the principles thereof or on the basis thereof of other evidence of bad character or morals, it shall determine that the granting or renewal of such license would tend to encourage or permit criminal or immoral activities within the Town of West New York.

- C. Any applicant for a massage business license or massage practitioner license shall file a written application with the Town of West New York Health Department on a form to be furnished by the Town of West New York Health Department.<sup>1</sup> The applicant shall accompany the application with a tender of an applicable licensing fee(s) pursuant to Chapter 186 of the Code of the Town of West New York, in addition, furnish the following:
- (1) The applicant's name, complete address, residence and cell phone number.
  - (2) All previous addresses within the last five years prior to the present address of the applicant.
  - (3) Written proof of age.
  - (4) Height, weight, sex and color of hair and eyes.
  - (5) A copy of the applicant's certificate or license, issued by the State of New Jersey, as provided for pursuant to N.J.S.A. 45:11-53 et seq. and N.J.A.C. 13:37A-1.1 et seq.
  - (6) Previous employment and business history, including whether or not the applicant has previously operated in this or another municipality or state under a license or permit and whether or not any such license or permit was denied, revoked or suspended and the reason therefor and the business activities or occupations subsequent to such action or denial, suspension or revocation.
  - (7) 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.
  - (8) Upon initial application, a written waiver and consent to allow a fingerprint and criminal background check by the West New York Police Department. For this, a fee shall be paid by the applicant.
  - (9) The names and addresses of two adult residents of this state who will serve as character references. These references must be persons other than relatives and business associates.
  - (10) A written declaration by the applicant under penalty of perjury that the foregoing information contained in the application is true and correct.
- D. The Town of West New York Health Department may issue a massage business license and/or massage practitioner license within 30 days following receipt of a completed application and the certifications set forth

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<sup>1</sup> Form will need to be drafted.

in this chapter if all requirements described in this chapter are met, unless the Town of West New York Health Department finds that:

- (1) The correct license fee has not been tendered to the Town of West New York and, in the case of a check or bank draft, honored with payment upon presentation.
- (2) In the case of a massage business application, the operation as proposed by the applicant, if permitted, would not comply with all applicable laws, including but not limited to the Town of West New York building, zoning, fire and health codes and regulations.
- (3) The applicant has knowingly made any false, misleading or fraudulent statement of fact in the license application or in any document required by the Town of West New York in conjunction therewith.
- (4) The applicant has had a massage business, massage practitioner or other similar permit or license denied, revoked or suspended by the Town of West New York or any other state or local agency, which finding may be waived by the Board of Commissioners in its discretion.
- (5) The applicant, if an individual, any of the officers and directors or managing director, if the applicant is a corporation, any of the members or managing member, if the applicant is a limited-liability company, any of the partners, including limited partners, or managing partner, if the applicant is a partnership, or the manager or other person principally in charge of the operation of the business is not over the age of 18 years.
- (6) The applicant(s), if an individual, any of the officers and directors or managing director, if the applicant is a corporation, any of the members or managing member, if the applicant is a limited-liability company, any of the partners, including limited partners, or managing partner, if the applicant is a partnership, or the manager or other person principally in charge of the operation of the business has been convicted of an offense involving sexual misconduct with children, prostitution, soliciting for purpose of offenses opposed to decency and morality, or any crime of moral turpitude.

**§ 248-\_\_\_\_. Transferability.**

No license issued pursuant to this Chapter is transferable, separate or divisible.

**§ 248-\_\_\_\_. Operating requirements.**

- A. Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers or given to the patron in the manner they can read.
- B. Massage practitioners and employees shall be clean and wear clean, nontransparent outer garments.
- C. The sexual, genital and rectal areas of patrons must be covered by towels, cloths or undergarments when in the presence of massage practitioners or employees.
- D. While administering massage, as defined in this chapter, it shall be unlawful for any person knowingly to place his or her hand upon or to touch, fondle or massage in any manner a sexual, genital and/or rectal area of himself or herself or any other person.
- E. No massage practitioner, employee or licensee shall perform, or offer to perform, any act which would require the touching of a patron's sexual, genital or rectal area.
- F. All massage practitioners and employees shall refrain, under all circumstances, from initiating or engaging in any sexual conduct, sexual activities or sexualizing behavior involving a patron, even if a patron attempts to sexualize the relationship.
- G. 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 that 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.
  - (1) Oils, creams, lotions, stones and other preparations used in administering massage shall be kept in clean, closed containers or cabinets.
  - (2) Eating in a massage business shall not be permitted except in a designated cafeteria/kitchen. Animals, except for Seeing Eye dogs, shall not be permitted in a massage business.
  - (3) Each massage practitioner shall wash his or her hands in hot running water, using a proper soap or disinfectant, before administering a massage to each patron.



(4) All massage practitioners and massage businesses shall maintain appropriate liability insurance coverage with a reputable company licensed by the State of New Jersey in an amount of not less than \$1,000,000 per occurrence and in the aggregate for all claims caused by personal injury. A certificate of insurance in acceptable form shall be provided to the Office of the Clerk to the Town of West New York within 10 days of the issuance of the license. In the event that the certificate of insurance is not provided to the Office of the Clerk within the time prescribed, the license will be revoked. Proof of appropriate liability insurance must be conspicuously posted.

H. Nothing contained herein shall be construed to eliminate other requirements of statute or chapters concerning the maintenance of premises or to preclude authorized inspection thereof.

**§ 248-\_\_\_\_. Minors prohibited; exception.**

No person shall permit any person under the age of 18 years to receive a massage without advance written permission from his or her parent, caregiver or guardian or unless a parent, caregiver or guardian is present in the room during the time of the massage.

**§ 248-\_\_\_\_. Alcoholic beverages prohibited.**

No person shall sell, give, dispense, provide or keep or permit the sale or consumption of alcoholic beverages on the premises of a massage business.

**§ 248-4\_\_\_\_. Exceptions.**

This chapter shall not apply to any duly licensed physician or chiropractor, nor shall it apply to any registered physical therapist or registered nurse performing his or her duties and functions under the direction or pursuant to the prescription of a duly licensed physician.

**§ 248- \_\_\_\_ . Maintenance of register required.**

All massage business licensees must maintain a register of all persons employed as massage practitioners and their license numbers and all other employees and agents. Such register shall include the name, address, date of birth and social security number of all massage practitioners, employees and agents and shall be available for inspection at all times during regular business hours.

**§ 248- \_\_\_\_ . Responsibilities of licensee.**

The licensee shall be responsible for all actions which occur on the premises of a massage business, whether by massage practitioners, employees, subcontractors or other agents, where the licensee has actual or constructive knowledge of such actions.

**§ 248- \_\_\_\_ . Inspections.**

The Town of West New York Health Department, Town of West New York Police Department, Town of West New York Construction Department and Town of West New York Fire Department shall, from time to time, announced or unannounced, make an inspection of each massage business 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 and in compliance with this chapter. It shall be unlawful and grounds for a suspension and/or revocation of the license for any licensee to fail to allow such inspection officer access to the premises or to hinder such officer in any manner.

**§ 248- \_\_\_\_ . Sign stating hours required.**

All massage business(es) shall have a sign not less than 18 inches wide by 16 inches long which shall be prominently stated the hours during which said establishment shall be open. The sign shall be displayed in such a manner that all persons frequenting the establishment shall have an unobstructed view thereof.

**§ 248- \_\_\_\_ . Restrictions on hours of operation of licensees.**

No licensee licensed in accordance with this Chapter shall commence business before 8:00 a.m. and not after 8:00 p.m.

**§ 248- \_\_\_\_ . Posting of license required.**

All licenses issued hereunder shall be exhibited in a conspicuous locations at all times.

**§ 248-5 \_\_\_\_ . Violations and penalties.**

The Town of West New York may, in lieu of revocation, impose a fine or suspend a license issued pursuant to this Chapter. Any person, as defined above, who shall violate any of the provisions contained in this Chapter shall be subject to a fine not to exceed \$1,000 or be imprisoned for a period not to exceed 90 days, or both, for each and every offense. Each separate day that the provisions of this chapter are violated by any person, as defined herein, shall constitute a separate and distinct offense and violation of this chapter.

**§ 248- \_\_\_\_ . Existing establishments and practitioners.**

All massage businesses and/or massage practitioners who presently engage in the business of massage must comply with the provision of this chapter within 30 days of the effective date of this chapter.

**§ 248-6 \_\_\_\_ . Revocation of licenses or permits.**

A violation of the provisions of this Chapter shall also constitute grounds for the revocation of any license, permit or certificate issued by the municipality relating to the premises in question.

**§ 248- \_\_\_\_ . Separation of living quarters.**

No part of a massage business licensed pursuant to this Chapter shall be occupied or used or furnished for sleeping quarters and/or living quarters.

**§ 248- \_\_\_\_ . Implied endorsement prohibited.**

No person massage business or massage practitioner shall state, represent, warrant, advertise or imply to a customer, potential customer or to the public at large that the establishment is endorsed, regulated or approved by the Town, or any department thereof, or is conducted in compliance with the terms of this Chapter.

**§ 248- \_\_\_\_ . Locations.**

No massage business will be located 500 feet of a school zone.

**§ 248- \_\_\_\_ . Appeals.**

In the event that any applicant for a license shall have been refused a license or in the event that any licensee shall have had his license revoked or suspended, said person shall have the right and privilege to appeal from such refusal to grant a license or suspension or revocation of a license to the Board of Commissioners of the Town of West New York; provided, however, that not less than five days' written notice of such appeal shall have been served upon the Board of Commissioners, either in person or by registered mail, return receipt requested, and a date of hearing before the Board of Commissioners shall be fixed no later than 30 days after the receipt of said notice of appeal. Thereupon, the Board of Commissioners shall notify said person of the place, date and time of hearing.

**§ 248- \_\_\_\_ . Severability.**

In the event that any section, subsection, or any part of this Chapter shall be declared invalid, such decision shall not be deemed to affect the validity of any other section, subsection, or other part of this Code.

**§ 248- \_\_\_\_ . Inconsistent provisions repealed.**

All ordinances or parts of same inconsistent with any provisions of this chapter are hereby repealed to the extent of such inconsistency.

### **SUMMARY OF ORDINANCE**

This ordinance authorizes the Town of West New York to repeal Chapter 248 (Massage Parlors) of the Code of the Town of West New York and substitute the repealed Chapter 248 with the newly adopted Chapter 248 (Massage Parlors).

**Introduced: 11/23/2015**

### **Notice**

The foregoing Ordinance was adopted for first reading by the Mayor and Board of Commissioners of the Town of West New York, New Jersey, on **November 23, 2015** and ordered published, and will be further considered before final passage at a public hearing on **December 16, 2015 at 7:00 p.m.** at the Commission Chambers, Municipal Building, West New York, NJ. A copy of this Ordinance has been posted on the bulletin board upon which public notices are customarily posted on in the Town Hall of the Town of West New York, and a copy (at no charge) is available up to and including the time of such meeting to the members of the public of the Town who shall request such copies, at the Office of the Town Clerk in said Town Hall in West New York, N.J.

Carmela Riccio, RMC  
Town Clerk