

**TOWNSHIP OF HEMPFIELD
ORDINANCE NO. 2005- 3**

**AN ORDINANCE OF THE TOWNSHIP OF HEMPFIELD
CREATING CHAPTER 56 OF THE CODE OF THE
TOWNSHIP OF HEMPFIELD TO BE ENTITLED
MASSAGE THERAPY ESTABLISHMENTS; MASSAGE ESTABLISHMENTS;
SAID ORDINANCE ESTABLISHING LICENSING PROVISIONS FOR
MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS; SAID
ORDINANCE FURTHER PROVIDES FOR THE ISSUANCE OF LICENSES;
LICENSE APPLICATIONS; APPROVAL AND REVOCATION OF LICENSES**

WHEREAS, the Board of Supervisors of the Township of Hempfield, Commonwealth of Pennsylvania are authorized, pursuant to the police powers granted to it by the Second Class Township Code of the Commonwealth of Pennsylvania to establish licensing provisions for certain businesses located within the corporate limits of the Township of Hempfield; and

WHEREAS, pursuant to said authority granted to Townships of the Second Class, the Board of Supervisors of the Township of Hempfield are empowered to adopt standards for massage establishments located within the Township of Hempfield, Westmoreland County, Commonwealth of Pennsylvania; and

WHEREAS, the Board of Supervisors of the Township of Hempfield, find that the operation of massage establishments may adversely effect the health, safety and welfare of the citizens within the Township of Hempfield absent regulation by the Township of Hempfield; and

WHEREAS, the Board of Supervisors of the Township of Hempfield find that absent regulation, sexual conduct or the conduct suggestive of sexual contact, rather than the massage of the body has or may become the business of many massage establishments; and

WHEREAS, the Board of Supervisors of the Township of Hempfield find that the keeping of records by massage therapy establishments will deter prostitution, obscenity, public indecency; further inhibit minors from frequenting such premises; and

WHEREAS, the Township of Hempfield finds that absence of right of entry by an employee or agent by the Township of Hempfield, the enforcement of this Ordinance would be frustrated; and

WHEREAS, the Board of Supervisors of the Township of Hempfield find that the unregulated operation of massage establishments would hinder the protection of the citizens within the jurisdiction of the Board of Supervisors of the Township of Hempfield from lewd and immoral acts taking place in massage therapy establishments.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED and it is hereby ordained and enacted pursuant to the authority granted to Township's of the Second Class as follows:

SECTION I: There is hereby created and established Chapter 56 of the Code of the Township of Hempfield to be known as Massage Therapy Establishments, and shall read as follows:

CHAPTER 56 – MASSAGE THERAPY ESTABLISHMENTS

§ 56-1. Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this chapter.

EMPLOYEE – Any person over 18 years of age, 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 business or patrons.

HEALING ARTS – The science and skill of diagnosis, prevention or treatment, in any manner whatsoever, of disease or any ailment of the human body.

HEALTH CARE PRACTITIONER – An individual who is authorized to practice some component of the healing arts by a license, license, certificate or registration issued by a commonwealth-licensing agency or board. The term includes, but is not limited to, a medical doctor, an osteopathic physician, a chiropractor, or dentist, an optometrist, a pharmacist, a physical therapist, a podiatrist, a professional nurse and a psychologist.

MASSAGE or MASSAGE THERAPY – The application of a system of structured touch, pressure, movement, and holding to the soft tissue of the human body in which the primary intent is to enhance or restore health and wellbeing of the client. The term includes the external application of water, heat, cold, lubricants, or other topical preparations, and electro-mechanical devices, which mimic or enhance the actions of the hands. The term does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustment, electrical stimulation, ultrasound or prescription of medicines, for which a licensed to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry, or other practice of the healing arts is required.

MASSAGE THERAPIST – A person who engages and administers massage or massage therapy.

PERSON – Any individual, proprietorship, partnership, corporation, association or other legal entity.

RECOGNIZED SCHOOL – Any school or institution of learning which has for its purpose the teaching of the theory, method, profession or work of massage, which school requires a resident course of study of not less than 600 hours before the student shall be furnished with a diploma or certificate of graduation from such school following the successful completion of such course of study or learning.

TOWNSHIP – The Township of Hempfield.

§ 56-2. License required.

- A. Business license required. No person shall engage in or carry on the business of massage or massage therapy unless a valid massage business license has been issued by the Township of Hempfield, pursuant to the provisions of this Chapter, for each and every separate office or place of business conducted by such person.
- B. Massage Therapist license required. No person shall practice massage or massage therapy as a Massage Therapist, employee or otherwise, unless a valid and subsisting massage therapist license has been issued by the Township of Hempfield pursuant to the provisions of this Chapter.
- C. In the event the massage therapy business is a sole proprietor operated by a massage therapist, a single fee shall be charged for both the business license and the massage therapist license. Further, in the event that the principal owner of the business is also a massage therapist, a single license shall be provided for both the business and the massage therapist. However, all other employees of the business who are employed as massage therapists shall have a separate license.

§ 56-3. Application for massage business license.

The initial license shall expire on the 31st day of December of the year in which it is issued and may be renewed only by making application as provided in § 56-3 and § 56-4. Any person desiring a massage business license shall file a written application with the Township Code Enforcement Officer on a form to be furnished by the Township Code Enforcement Officer. The applicant shall accompany the application with a tender of the correct license fee as hereinafter provided and shall, in addition, furnish the following:

- A. The type of ownership of the business, i.e. whether individual, partnership, corporation or otherwise.
- B. The name, style, and designation under which the business or practice is to be conducted.
- C. The business address and all telephone numbers where the business is to be conducted.
- D. A complete list of the names and residence addresses of all massage therapists 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.
- E. The following personal information concerning the applicant, if an individual; concerning each stockholder holding more than ten (10%) percent 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:
 - (1) The name, complete residence address and residence telephone numbers.
 - (2) The two previous addresses immediately prior to the present address of the applicant.

- (3) Written proof of age.
- (4) Height, weight, color of hair, eyes, and sex.
- (5) Two front-face portrait photographs (at least two (2") inches by two (2") inches in size), taken within thirty (30) days of the date of the application.
- (6) The massage or similar business history and experience, including but not limited to, whether or not such person, in previously operating in this Township or another municipality or state under license or license, has had such license or license denied, revoked or suspended and the reason therefore; and, the business activities or occupations subsequent to such action of 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) A complete set of fingerprints, taken by the Pennsylvania State Police or other Law Enforcement entity.
- (9) A diploma, certificate or other written proof of graduation from a recognized school, as defined herein, by the person who shall be directly responsible for the operation and management of the massage business. Provided, however, that any massage therapist who is practicing massage therapy within the corporate limits of the Township of Hempfield as of the date of the adoption of this Ordinance shall be required to have a minimum of three (300) hours of course study at a recognized school.

F. Such other information and identification as shall be deemed necessary by the Township Code Enforcement Officer to discover the truth of the matters hereinbefore required to be set forth in the application.

- G. Authorization for the Township of Hempfield, 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. The authorization provided for herein shall terminate at the time the license is issued. All information obtained pursuant to this section shall be deemed confidential and shall not be considered a matter of public record nor shall the same be divulged to any individuals other than law enforcement official officers who have requested the same.
- H. The names and addresses of three adult residents of the Commonwealth of Pennsylvania 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 correct, said declaration being duly dated and signed in the Township.

§ 56-4. Application for massage therapist's license.

Any person desiring a massage therapist's license shall file a written application with the Township Code Enforcement Officer on a form to be furnished by the Township Code Enforcement Officer. The application shall tender with the application the correct license fee as hereinafter provided and shall, in addition, furnish the following:

- A. The business address and all telephone numbers where the massage is to be practiced.
- B. The following personal information concerning the application:
 - (1) The applicant's name, complete residence address and residence telephone numbers.

- (2) The two previous addresses immediately prior to the present address of the applicant.
 - (3) Written proof of age.
 - (4) Height, weight, color of hair, eyes, and sex.
 - (5) Two front-face portrait photographs (at least two (2") inches by two (2") inches in size), taken within thirty (30) days of the date of the application.
 - (6) The massage or similar business history and experience, including but not limited to, whether or not such person, in previously operating in this Township or another municipality or state under license or license, has had such license or license denied, revoked or suspended and the reason therefore; and, the business activities or occupations subsequent to such action of 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) A complete set of fingerprints, taken by the Pennsylvania State Police or other Law Enforcement entity.
 - (9) A diploma, certificate or other written proof of graduation from a recognized school, as defined herein, by the person who shall be directly responsible for the operation and management of the massage business.
- C. Such other information and identification deemed necessary by the Township Code Enforcement Officer in order to discover the truth of the matters hereinbefore required to be set forth in the application.

- D. Authorization for the Township of Hempfield, its agents, and its 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. The authorization provided for herein shall terminate at the time the license is issued. All information obtained pursuant to this section shall be deemed confidential and shall not be considered a matter of public record nor shall the same be divulged to any individuals other than law enforcement official officers who have requested the same.
- E. 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 Township

§ 56-5. Approval by Township Code Enforcement Officer.

- A. Upon receiving the application for a massage business or massage therapist's license, the Township Code Enforcement Officer shall conduct an investigation into the applicant's moral character and personal and criminal history. The Township Code Enforcement Officer may, in his discretion, require a personal interview of the applicant and obtain such further and identification of the person as shall bear on the investigation conducted by the Code Enforcement Officer for the purposes of issuing the license.
- B. In the case of the applications for massage business licenses or massage therapist's license, the Township Code Enforcement Officer shall cause to be conducted an investigation of the premises where the massage business is to be carried on, for the purposes of assuring that such premises comply with the sanitation requirements as set forth in this chapter and with the regulations of public health, safety and welfare.
- C. Before any license shall issue under this chapter, the Township Code Enforcement Officer shall first sign his approval of the application.

§ 56-6. Issuance or denial of massage business license; or massage therapist renewals; suspension and/or revocation of license and appeals.

§ 56-6.1 The Township Code Enforcement Officer shall issue a massage business license, massage therapist's license or a renewal thereof within forty-five (45) days of receipt of the application unless he finds that:

- A. The correct license fee has not been tendered to the Township, and, in the case of a check or bank draft, honored with payment upon presentation.
- B. The operation, as proposed by the applicant, if licensee, would not comply with all applicable laws, including but not limited to, the Township's building, zoning and health regulations.
- C. The applicant, if an individual; any of the stockholders holding more than ten (10%) percent of the stock in the corporation, any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business have been convicted of any crime involving dishonesty, fraud or deceit, unless such conviction occurred at least five (5) years prior to the date of the application.
- D. The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the Township in conjunction therewith.
- E. The applicant has had a massage business, massage therapist or other similar license or license denied, revoked or suspended for any of the above causes by the Township or any other State or local agency

within five (5) years prior to the date of the application.

- F. The applicant, if an individual; any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business are not over the age of 18 years.
- G. The manager or other person principally in charge of the operation of the business has not successfully completed a course of study or learning from a recognized school, as defined herein, where the theory, method, profession or work of massage is taught.

§ 56-6.2

A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the Township that the applicant has not been convicted of any specified criminal activity as defined in this chapter or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in §56-8. An application for renewal shall be made no later than sixty (60) days before the expiration date.

§ 56-6.3

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 56-3 and § 56-4. Application for renewal shall be made at least sixty (60) days before the expiration date, and when made less than sixty (60) days before the expiration date, the date of expiration of the license will not be extended.

§ 56-6.4

When the Township denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Township finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

§ 56-6.5

Any massage business or massage therapist's license issued under this chapter shall be subject to suspension or revocation by the Township Code Enforcement Officer for violation of any provision of this chapter or for any grounds that would warrant for denial of such license in the first place. The Township Code Enforcement Officer, upon such revocation or suspension, shall state his reasons, in writing, specifying the particular grounds for such revocation or suspension.

§ 56-6.6

All license application, renewal, suspension or revocation decisions shall be sent, in writing, to the applicant or licensee. All such decisions which deny, suspend or revoke a license shall state specifically the ordinance requirement not met and any other basis for the decision. After denial of an application, or denial of a renewal of an application, or after suspension or revocation of any license, the applicant or licensee may appeal pursuant to the Local Agency Law to the Township Board of Supervisors. The Township Board of Supervisors will then hold a Local Agency Law hearing within twenty (20) days from the date of the appeal is filed and will render a written decision within ten (10) days from the date such hearing concludes. Any such appeal must be filed, in writing, with the Township Secretary/Treasurer, within ten (10) days from the date of mailing of the decision appealed from. Failure to file said appeal with the Township Secretary/Treasurer within ten (10) days from the date of mailing of the decision appealed from shall be deemed a conclusive determination as to the issues or matters addressed by the written decision. In the case

of a denial of a license renewal, or in the case of a license suspension or revocation, the licensee may continue to operate to the same extent as immediately prior to the suspension or revocation until the earlier of:

- (1) The expiration of the ten-day appeal period without filing of an appeal; or
- (2) The date of a decision dismissing any appeal.

§ 56-7. Display of licenses.

The massage business licensee shall display his license and that of each and every massage therapist employed in the establishment in an open and conspicuous place on the premises of the massage business.

§ 56-8. License fees.

The license fee and renewal fee for a massage business shall be as set from time to time by Resolution of the Board of Supervisors. The license fee and renewal fee for massage therapists shall be as set from time by Resolution of the Board of Supervisors.

§ 56-9. Transfers prohibited.

No massage business and massage therapist licenses are transferable, separate, or divisible, and such authority as a license confers shall be conferred only on the licensee named herein.

§ 56-10. Sanitation and safety requirements.

All premises used by licensees hereunder shall be periodically inspected by the Township Code Enforcement Officer or his authorized representatives for safety of the structure and adequacy of plumbing, ventilation, heating, and illumination. The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the massage operation shall be maintained in a clean and sanitary condition. Towels, linen,

and items for personal use of operators and patients 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. Nothing contained herein shall be construed to eliminate other requirements of statute or Ordinance requiring the maintenance of premises nor to preclude authorized inspection thereof.

§ 56-11. Minors prohibited on the premises, exceptions,

No person shall permit any person under the age of 18 years to come or remain on the premises of any massage therapy business establishment as a massage therapist. Nothing shall preclude a person under the age of 18 from being employed by the business as a secretary, receptionist, or any other form of employment other than that of a massage therapist. Further, nothing shall preclude or inhibit an individual under the age of 18 from being a patron of the massage establishment.

§ 56-12. Alcoholic beverages prohibited.

No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept any alcoholic beverages on the premises of any massage business for consumption by a customer.

§ 56-13. Exceptions.

The provisions of this chapter shall not apply to hospitals, nursing homes, sanitariums, health care practitioner, or persons holding an unrevoked certificate to practice the healing arts under the laws of the Commonwealth of Pennsylvania or persons working under the direction of any such persons or in any such establishment, nor shall this chapter apply to barbers or cosmetologists lawfully carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued by the Commonwealth of Pennsylvania. The provisions of this Chapter shall not apply as follows:

- A. To hospitals, nursing homes, sanitariums, health care practitioners, or persons holding an unrevoked certificate to practice the healing arts under the laws of the Commonwealth of Pennsylvania.

- B. To persons working under the direction of any such person or any establishment as set forth in subparagraph A above.
- C. Barbers or cosmetologists lawfully carrying out their particular profession or business and holding a valid unrevoked license or certificate of registration issued by the Commonwealth of Pennsylvania.
- D. The practice of massage therapy by persons employed by the Federal Government while the person is engaged in the duties provided by the laws and regulations of the United States of America.
- E. The practice of massage therapy by persons duly licensed, registered or certified in another state, territory, the District of Columbia or a foreign country when incidentally called into the Township of Hempfield to teach a course related to massage therapy or to consult with persons licensed under this Chapter.
- F. Students enrolled in a state approved recognized school while completing a clinical requirement for graduation that shall be performed under the supervision of a person who may be licensed as a massage therapist by the Commonwealth of Pennsylvania.
- G. Individuals incidentally in the Township of Hempfield to provide service as part of an emergency response team working in conjunction with disaster relief officials.
- H. The practice of event massage, such as sporting events, conventions, or public participation in a sports event.
- I. To individuals who travel to their client's place of residence in order to perform a massage or massage therapy.

§ 56-14. Violations and penalties.

Any person, firm or corporation violating any of the provisions of this chapter shall be fined not more than Six Hundred (\$600.00) Dollars, plus costs for each offense, and a separate offense shall be deemed committed on each day during or

on which a violation occurs or continues. In default of payment, the offender may be imprisoned for not more than thirty (30) days.

SECTION II: If any portion of this ordinance is declared to be illegal, unenforceable, or unconstitutional by any Court of competent jurisdiction, the decision of said Court, unless otherwise specifically stated, shall not affect any of the remaining portions of this ordinance.

SECTION III: It is herein declared that the provisions of this ordinance are severable, and if any provisions, portions, or sections of this ordinance are declared to be illegal, invalid, or unconstitutional, the decision or decisions of any Court, which makes such declarations, shall not impair or affect any of the remaining portions of this ordinance.

SECTION IV: This ordinance shall be recorded in the ordinance book of the Township of Hempfield and shall be effective July 1st, 2005.

ORDAINED AND ENACTED this 28th day of February, 2005.

TOWNSHIP OF HEMPFIELD

By _____
Chairman, Kim Ward

ATTEST: (SEAL)

Secretary, Rob Ritson