

LOWER PROVIDENCE TOWNSHIP
Montgomery County, Pennsylvania

ORDINANCE NO. 658
(Duly Adopted March 7, 2019)

**AN ORDINANCE OF LOWER PROVIDENCE TOWNSHIP,
MONTGOMERY COUNTY, PENNSYLVANIA, PROVIDING FOR
COMPREHENSIVE REGULATIONS FOR MASSAGE PROVIDERS,
AMENDING CHAPTER 108 OF THE CODE OF ORDINANCES**

WHEREAS, THE Township is aware that a number of businesses or enterprises known as massage businesses or massage establishments, as those terms are hereinafter defined, have been located and operate in the neighboring communities; and

WHEREAS, those businesses or enterprises have in several instances been found by those communities' police departments, upon due investigation, to be operating in violation of laws of the Commonwealth of Pennsylvania; and

WHEREAS; in the course of conducting the aforementioned investigations, unsanitary and unhealthful conditions were prevalent in, and directly related to, the operation of those businesses or enterprises; and

WHEREAS, Lower Providence Township desires to avoid such unsanitary and unhealthful conditions by requiring minimum standards for such uses.

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Lower Providence Township Board of Supervisors as follows:

ARTICLE I.

Chapter 108 Article II, Massage Providers, of the Code of the Township of Lower Providence is hereby enacted as follows:

§108-8. Findings.

The Lower Providence Township Board of Supervisors finds as follows:

- A. That those businesses or enterprises known as massage businesses or massage establishments, as hereinafter defined, frequently operate in violation of the laws of the Commonwealth of Pennsylvania;

- B. That in many instances unsanitary and otherwise unhealthful conditions exist in those businesses or enterprises known as massage businesses and massage establishments, as those term are hereinafter defined; and
- C. That based on paragraphs (a) and (b) above, the close regulation of those businesses or enterprises known as massage businesses and massage establishments, as hereinafter defined, is necessary to protect the public health, safety, and welfare.

§108-9. Definitions and Word Usage.

- A. The following words, terms, and phrases, when used in this Ordinance, shall have the following meanings ascribed to them:

MASSAGE - Any method of treatment or therapy of the superficial soft parts of the body by rubbing, stroking, tapping, pressing, shaking, or kneading with the hands, feet, or elbow, and similar therapeutic practices whether or not aided by any mechanical or electrical apparatus, appliances, or supplementary aids such as rubbing alcohol, liniments, antiseptic oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice.

MASSAGE BUSINESS – The administering of a massage in return for the payment of a fee or other compensation or consideration to the person administering the massage either directly or indirectly.

MASSAGE ESTABLISHMENT - Any place in the township where massages are administered for the payment of a fee or other compensation or consideration, but not including a hospital, nursing home, medical clinic or the office of a physician, surgeon, physical therapist, chiropractor or osteopath, currently licensed as such by the Commonwealth of Pennsylvania, or to include barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders, or any athletic program of an accredited junior and senior high schools or college in which a massage is administered by a trainer within the scope of such athletic program.

MASSAGE PROVIDER – Any Massage Establishment as defined herein or any Massage Technician as defined herein.

MASSAGE TECHNICIAN - Any person who administers a massage to another as a part of a Massage Business, but not including a physician, surgeon, chiropractor, osteopath, physical therapist or nurse, currently licensed as such by the Commonwealth of Pennsylvania, or any coach and trainer of an athletic program of an accredited junior and senior high schools or college in which a massage is administered by such coach or trainer within the scope of such athletic program.

PERSON - Any individual, association, firm, partnership, limited partnership, corporation, trust or other legally recognized entity.

RECOGNIZED SCHOOL - Any school or educational institution licensed and accredited to operate as a school or educational institution in the state in which it is located or any school recognized or approved by the American Massage and Therapy Association, Inc.

SEXUAL OR GENTIAL AREA - The genitals, pubic area, buttocks, anus or perineum of any person and the vulva and breasts of a female.

TOWNSHIP OFFICIAL – A member of the Police Department or an official assigned to enforce the Code.

B. In this chapter, any word used in the singular shall include the plural, and any word used as a plural shall include the singular, and the masculine shall include the feminine and the neuter.

§108-10. License Requirements.

A. No person shall engage in a Massage Business (including as a Massage Technician) unless such person shall possess a valid license issued pursuant to the provisions of this Ordinance, and no person shall operate a Massage Establishment at any place within the Township unless a valid license is issued pursuant to the provisions of this Ordinance for each and every such establishment.

B. Application.

(1) Fee. Any person desiring to obtain a license to engage in a Massage Business or operate a Massage Establishment shall submit an application to the Township Official. A fee shall accompany the submission of the application to defray the costs of administration and investigation. The amount of the fee shall be TWO HUNDRED FIFTY DOLLARS (\$250.00), or a different amount as may be from time to time set by Resolution of the Township of Lower Providence.

(2) Contents. Any person desiring to obtain a license to engage in a Massage Business or operate a Massage Establishment shall file a fully completed written application with the Township Official on a form to be provided by the Township Official. The Application form shall include a criminal release form to enable the Township Official to investigate the criminal offense history of any applicant.

C. Investigation. Applications for licenses for massage therapy technicians shall be referred to the Lower Providence Police Department, which shall cause an investigation to be made and report the findings to the Township Official. Applicants shall cooperate with any investigation conducted pursuant to the provisions of this Ordinance and shall permit access to the proposed place of business and facilities in conjunction with such investigation. In addition, each applicant for licenses for a massage therapy technician must submit the following:

(1) Two forms of identification issued by either the federal or state government with one containing a photograph.

- (2) FBI criminal background check per the directions at FBI website (must be the sealed and unopened envelope from FBI).
 - (3) Certified state police criminal background check for the state in which they reside (must be notarized).
 - (4) Signed release permitting Lower Providence Police Department to conduct local records check.
- D. Granting of license. Within sixty (60) days of the receipt of an application and fee, the Township Official shall either grant or deny license applied for by the applicant. The license shall be granted provided that:
- (1) The proposed Massage Establishment complies with all applicable ordinances of the Township, including but not limited to the building, fire prevention, and zoning ordinances of the Township.
 - (2) No person whose name appears on the application, including owners and prospective employees, has been convicted of or entered a plea of guilty to any felony or has a felony charge currently pending or has forfeited bail or has been convicted of or pleaded guilty to a violation of Chapter 31 (pertaining to Sexual Offenses) or Section 5902 (pertaining to prostitution and related offenses) of the Crimes Code of the Commonwealth of Pennsylvania, or any law of any other jurisdiction involving sexual misconduct.
 - (3) The Massage Technician or Massage Establishment, as applicable, applies for and obtains any required business licenses and makes arrangements for the payment of any required business privilege taxes, occupational privilege taxes, or earned income taxes imposed by the Township.
- E. No person shall be licensed and/or recognized as a Massage Technician, by the Township, unless such person shall have completed a course of study in recognized school, which has for its purpose the teaching of the theory, method, profession or work of massage, which school requires at least 70 hours of course study for the issuance of a diploma or certificate of graduation. In the event that such person was previously licensed to perform massages in the Township, not having completed such course of study, at the expiration of such person's current license, such person shall be issued a provisional license for a six (6) month period for the purpose of enrolling in and completing such course of study.

§108-11. Massage Establishment Facilities.

Each Massage Establishment shall comply with the following requirements:

- A. The premises shall have adequate equipment for disinfecting instruments and materials used in the administration of massages. Such instruments and materials shall be disinfected after every use.
- B. All massage tables, bathtubs, shower stalls, steam rooms, sauna rooms, bath areas and floors shall have surfaces which may be readily disinfected.
- C. All walls, ceilings, floors, showers, bathtubs, steam rooms, sauna 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, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. When carpeting is used on the floors, it shall be kept dry.
- D. The premises shall be equipped with a service sink for custodial services.
- E. Each Massage Establishment shall have a minimum of one (1) shower, one (1) toilet and one (1) washbasin.
- F. If male and female patrons are to be served simultaneously, such massage rooms, dressing facilities, toilet facilities, steam rooms and sauna rooms as are provided shall be provided as separate facilities for male and female patrons and each such separate facility or room shall be clearly marked as such.
- G. Rooms in which massages are to be administered shall have at least fifty (50) square feet of clear floor area and shall maintain a light level of no less than twenty (20) foot candles as metered at three (3) feet above the surface of the floor (for illustrative purposes only, such light level is equivalent to light from a single 40 watt fluorescent light bulb in a fifty square foot room). Lighting in colors other than white shall be prohibited. Such rooms shall contain a door incapable of being locked from either the exterior or the interior.
- H. No stuffed or upholstered furniture or beds and mattresses shall be permitted in rooms in which massage is to be administered. Such rooms shall be equipped with massage tables having a hard surface impervious to liquids, with a width of no more than three (3) feet and a length of no more than eight (8) feet. The surface of such tables shall be positioned at least two (2) feet above the surface of the floor. Such tables may be equipped with either nondisposable pads or coverings or disposable pads or coverings not more than two and one-half (2 1/2) inches thick. Nondisposable pads or coverings shall be removable, impervious to liquids and cleanable.

§108-12. Massage Establishment Operation Requirements.

Every Massage Establishment and every Massage Technician shall comply with the following requirements:

- A. Prohibited Conduct. No person other than an employee of the Massage Establishment shall be permitted to give massages in such Massage Establishment, and all Massage

Technicians giving massages in any Massage Establishment shall be licensed as such and shall be deemed to be employees of the Massage Establishment for all purposes by the Township. Independent Contractors are specifically prohibited.

- B. Massage Establishments shall commence operations and massages may be administered no earlier than 7:00 a.m. The hours of operations shall extend no later than 10:00 p.m.
- C. A Massage Establishment shall prominently and publicly display all licenses issued by the Township or Commonwealth of Pennsylvania on the premises and each Massage Technician's license shall be available for inspection. Price rates charged for any and all services shall be prominently posted in the reception area in a location available for view and no charges may be made other than in accordance with such posted rates.
- D. No person under the age of eighteen (18) years of age shall be permitted to enter or remain on the premises or receive any massage unless accompanied at all times by a parent or legal guardian.
- E. Massage Establishments shall at all times be equipped with an adequate supply of clean towels, linens and coverings. Towels, linens and coverings shall not be used by or on more than one (1) patron unless they have first been laundered and disinfected. Disposable towels, linens and coverings shall not be used by or on more than one (1) patron. Soiled towels, linens and coverings shall be deposited in approved receptacles; disposable items shall not be deposited in the same receptacle as nondisposable items.
- F. Instruments used in administering massages shall not be used on more than one (1) patron unless they have first been disinfected. Massage table pads and reusable table coverings shall be disinfected after each use.
- G. Lotions and powder used during the administration of massage shall be stored separately in containers clearly labeled as to contents and shall be stored in cabinets used solely for such purpose.
- H. Massages shall not be administered to any patrons who have open sores or other visual signs of contagion or communicable disease.
- I. For the purposes of ascertaining violations of this Ordinance and conducting routine inspections, health inspectors, building inspectors, the Fire Marshal or duly authorized fire code inspectors of the Township, or police officers of the Lower Providence Township Police Department shall have the right of entry into the premises of any Massage Establishment during the hours such establishment is open for business.
- J. If an inspector observes that any Massage Technician has open sores or otherwise has reasonable grounds to believe that any Massage Technician is infected with a contagious or communicable disease, the inspector shall have the right to suspend such technician from practicing or administering massages until such time as the Massage Technician

furnishes a doctor's certificate showing the Massage Technician to be free of any contagious or communicable disease.

- K. The owner or licensee or duly authorized manager shall be on duty at all times during the hours such establishment is open for business, such owner, licensee or manager being able to be identified by wearing prominently an identification badge identifying as such owner, licensee or manager.
- L. Eating or drinking shall not be permitted on the premises, including but not limited to the serving, either for sale or otherwise, or the possession of any alcoholic beverages unless duly licensed by the Commonwealth of Pennsylvania.
- M. Animals, except for service animals as defined in the Americans with Disabilities Act (28 C.F.R. § 36.104) shall not be permitted within Massage Establishments.
- N. All employees, including Massage Technicians, shall only perform massages and have contact with patrons while fully clothed in clean and opaque clothing that fully covers the body from the shoulders to the thighs and is no shorter than six inches above the knee. The wearing of any form of lingerie as the sole garment shall be prohibited.
- O. No person, other than employees of the Massage Establishment, shall remain on the premises of a Massage Establishment more than one (1) hour after closing. No Massage Establishment shall be used as a dwelling unit or for residential purposes by any Massage Technician and to prevent the use of a Massage Establishment for use as a dwelling unit all persons, including employees, shall vacate the premises within two (2) hours after closing and shall not reenter the premises more than two (2) hours prior to opening.
- P. Massage Technicians shall wash their hands immediately prior to and subsequent of the administration of any massage.
- Q. It shall be unlawful for any person in a Massage Establishment to place his or her hands upon, touch, fondle or otherwise have any physical contact, including massaging a sexual or genital part of any other person or to offer to so touch any person. It shall be unlawful for any person, in a Massage Establishment to expose his or her sexual or genital area to any other person.

§108-13. Sale or Transfer of Massage Establishment.

No license issued under the provisions of this Ordinance shall be transferrable to another person. Upon the sale or transfer of any interest in a Massage Establishment, the license therefore shall be null and void. Any person desiring to continue to operate such Massage Establishment following the sale or transfer of any interest shall make application therefore pursuant to the provisions of this Ordinance.

§108-14. License Revocation.

Every license issued under the provisions of this Ordinance is subject to revocation for violation any of the provisions of this Ordinance. Said license may be revoked by the Township Official after notice of the basis for such revocation. The license holder shall have the right to appeal from such proposed revocation to the Board of Supervisors and request a hearing. Notice of revocation shall be given in writing and shall be served at least ten (10) days prior to the effective date of the revocation by certified mail, by personal service on the license holder or by posting the notice upon the entrance to the Massage Establishment. The notice shall advise the license holder of the right to appeal the proposed revocation. A hearing shall be held before the Board of Supervisors, and the license holder shall have the right to be represented at such hearing and to produce evidence.

§108-15. Expiration of License.

All license issued pursuant to the provisions of this chapter shall expire December 31 of each year after the date of issuance. No later than one month previous to the expiration, licensees shall make application for renewal of said license.

§108-16. Civil Remedies.

In addition to the refusal or revocation of a license as provided under this Ordinance, the owner of a Massage Establishment or any officer thereof, shall be liable for a civil penalty of not less than One THOUSAND Dollars (\$1000.00) for each and any violation of any provision of this Ordinance on the part of any agent, servant, or employee of such owner of a Massage Establishment in a civil proceeding brought before a District Justice by the Township in accordance with the Pennsylvania Rules of Civil Procedure. It shall be an affirmative defense that the violation alleged occurred without the knowledge of or outside the control of such owner or officer.

§108-17. TIME FOR COMPLIANCE. Businesses subject to the provisions of this Ordinance operating in the Township of Lower Providence as of the time of the effective date of this Ordinance shall have thirty (30) days from said effective date in which to comply with the provisions of this Ordinance.

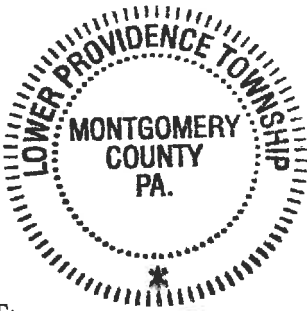
ARTICLE II. REPEALER. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed to the extent of the inconsistency.

ARTICLE III. SEVERABILITY. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisors of Lower Providence Township, that this Ordinance would have been adopted had

such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included therein.

ARTICLE IV. EFFECTIVE DATE. This Ordinance shall become effective five (5) days after enactment.

ENACTED AND ORDAINED this 7th day of March, A.D., 2019.



ATTEST:

A handwritten signature in black ink, appearing to be "DD Delamater".

Don D. Delamater, Township Manager

**LOWER PROVIDENCE TOWNSHIP
BOARD OF SUPERVISORS**

A handwritten signature in blue ink, appearing to be "Peter McFarland".

Peter McFarland, Chair

A handwritten signature in black ink, appearing to be "Colleen Eckman".

Colleen Eckman, Vice Chairwoman

A handwritten signature in blue ink, appearing to be "Patrick T. Duffy".

Patrick Duffy

A handwritten signature in blue ink, appearing to be "Jason F. Sorgini".

Jason Sorgini

A handwritten signature in blue ink, appearing to be "Gary Neights".

Gary Neights