

Legislation Text

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Amending Section 9-610 of The Philadelphia Code, entitled "Massage Businesses," Section 9-611 entitled "Masseurs and Masseuses," Section 10-1103 entitled "Prohibited Conduct," and Section 14-601 entitled "Use Categories," by deleting some sections and adding new provisions regarding licensing and registration of massage therapists and massage therapy businesses including changes to prohibited conduct, fees, penalties, purpose, definitions, zoning use categories, and other related items; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 9-610 of The Philadelphia Code is hereby amended to read as follows:

[§ 9-610. Massage Businesses.

(1) Licenses. No person shall engage in the business of, or be employed as, a masseur or masseuse unless he has obtained an operator's license from the Department of Licenses and Inspections.

(2) Information. Each applicant for an operator's license shall set forth on forms provided by the Department:

- (a) the name and address of the applicant and former addresses for a period of three years;
- (b) a statement of past employers for three years if the applicant desires an operator's license;
- (c) such other information that the Department may require.

(3) Fee. The applicant for an operator's license shall pay an annual license fee of \$40.00.

(4) Exemptions. The provisions of this ordinance shall not apply to massage treatments given

- (a) in the office of a licensed physician, osteopath, chiropractor, or a physical therapist;
- (b) in a regularly established medical center, hospital, or sanitarium;
- (c) in a residence of a person under doctor's care by the direction of the doctor;
- (d) upon the order of a licensed physician, osteopath, chiropractor, or physical therapist.]

§ 9-610. *Massage Therapy Business.*

(1) *Purpose. Legitimate massage professionals and businesses promote public health and well-being with therapeutic practices that temper aches and pains, ease stress, reduce blood pressure, and provide other valuable health benefits. However, the lack of local comprehensive laws for licensing massage therapy businesses has led to a proliferation of illegal massage businesses in Philadelphia. These illicit businesses are generally outlets of the sex trade, and some engage in human trafficking and other human rights violations. Such illegal massage businesses are detrimental to the health and safety of the community and adversely impact the local economy by driving legitimate business away, potentially affecting the vitality of neighborhoods and the provision of adequate services for residents and visitors alike. The Pennsylvania legislature enacted the Massage Therapy Act, Act 118 of 2008, which established a licensing board to oversee the licensing and practices of massage therapists. The purpose of this Section is to promote the health and safety of therapeutic massage customers and employees and to eliminate illicit massage businesses and sex trafficking by creating a local business licensing scheme to work in conjunction with the state Massage Therapy Act.*

(2) *Definitions. The definitions under Section 9-611 of this Code shall apply to this Section.*

(3) *Licenses.*

(a) *General Provisions.*

(i) *No person shall engage in the business of massage therapy unless the person has obtained a massage therapy business license from the Department.*

(ii) *Employees performing massage therapy must be registered as required under Section 9-611 of this Code.*

(iii) *Records of all business activity must be maintained on the premises of the business. At a minimum, the records shall contain for each service rendered: the date, time, name of massage therapist performing service, service performed, amount paid, name of patron. These records shall be made available for review upon demand to an authorized agent of the City during normal business hours.*

(iv) *Whenever any change in owner information occurs, the owner shall file a verified report with the Department within 30 days after the change occurs. Matters that shall be reported include, but are not limited to, name changes, change of business address, criminal convictions, the association of one or more new partners, associates, members, directors, or officers, or a substantial change of stock ownership, unless the change requires a new license.*

(v) *Licensees are responsible for the accuracy and truthfulness of their advertising*

whether placed in the advertising medium by themselves or by their agents or employees.

(vi) Licensees are responsible for the actions of their agents or employees in the conduct of the licensee's business.

(vii) All licensees shall conspicuously display their certificate of registration in an area clearly visible to the public.

(viii) At least one (1) licensed massage therapist shall be in attendance at all times during the operating hours of a licensed establishment.

(ix) Price rates for all services shall be prominently posted in an area clearly visible to the public.

(b) License Requirements. Each applicant for a massage therapy business license shall provide the following to the Department:

(i) The name and address of the applicant and all owners of the business;

(ii) A list of all past employers and businesses owned or operated by the applicant for five years prior to the date of application;

(iii) A copy of the applicant's and any other business owner's Pennsylvania instant criminal history check (PICS) and National Instant Criminal Background Check (NICS) dated within 60 days of the date of application;

(iv) A signed statement that the applicant consents to random administrative inspections by the Department of Public Health, or other authorized agent of the City, of its business records and facilities during normal operating hours;

(v) Such other information that the Department may require.

(4) Fee. The applicant for an operator's license shall pay an annual license fee of \$500.00.

(5) Prohibited Conduct.

(a) A massage therapy business is prohibited from operating between the hours of 10:00 p.m. to 7:00 a.m.

(b) Massage therapists may not offer or agree to disrobe and must be fully clothed in nontransparent garments during working hours.

(c) *No services other than those required to be posted shall be offered or performed.*

(d) *Lewd acts, and acts constituting solicitation of prostitution, or prostitution are strictly prohibited.*

(e) *No person shall interfere with, prevent, or refuse to permit a representative of the Department of Public Health to make an examination or inspection, during all business hours, of any premises maintained by a licensee in the course of his business, for the purpose of determining whether the licensee is complying with all the rules and regulations of the Department and the Department of Public Health, and all provisions of this Code affecting said business.*

(f) *No person shall interfere with, prevent, or refuse to permit a representative of the Department of Public Health, or other authorized City agent, who is conducting official City business to make an examination, inspection or copy of any record kept by a licensee.*

(6) *Penalties. Any person violating any portion this Section shall pay a fine of at least \$200, but not more than \$2000 and may have their license suspended or revoked by the Department. The Department shall report all violations of this Section to the Pennsylvania State Board of Massage Therapy.*

(7) *Regulations and Inspections. Administrative inspections shall be performed by the Department of Public Health. The Department shall issue all licenses and work cooperatively with the Department of Public Health in issuing regulations to implement this Section.*

SECTION 2. Section 9-611 of The Philadelphia Code is hereby amended to read as follows:

[§ 9-611. Masseurs and Masseuses.

(1) Definitions.

(a) Masseur. A licensed male or female person engaged in the business of, or employed as one massaging, manipulating, stimulating, exercising or performing similar work upon the human body with or without mechanical or electrical apparatus or appliances or medicinal substances.

(b) Master. A masseur who has successfully completed an examination administered by the Department of Health and has fulfilled requirements of an apprentice.

(c) Apprentice. A registered person serving under the direct supervision of a licensed master masseur.

(2) Requirements for License.

(a) No person shall engage in the business of, or be employed as a masseur master or apprentice unless he files a written application for registration with and on a form prescribed by the Department of Licenses and Inspections accompanied by a health certificate issued by a registered physician of Pennsylvania together with a registration fee of forty dollars (\$40.00) and obtains a license from the Department of Licenses and Inspections.

(b) No person may be licensed as a master or apprentice masseur unless he has complied with the examination, educational and practical requirements as determined by the Department of Health.

(c) Any licensed master masseur may instruct apprentices, provided that there shall be not more than one apprentice for every licensed master operator. Apprentices shall register with and supply to the Department of Licenses and Inspections the name and address of their master masseur and information required in order to determine their fitness and qualification as an apprentice. This shall become effective thirty (30) days after the results of the administration of the first examination for masters.

(d) One (1) year from the effective date of this ordinance, any licensed masseur may file for the first examination to be given by the Department of Health in order to qualify as a master masseur in lieu of an apprenticeship and other examinations may be given from time to time to masseurs who fail to so qualify.

(e) The entire license fee shall be paid by the applicant for the calendar year regardless of the date of issuance. The license may be renewed annually and shall be accompanied by the license fee and a certification from a registered licensed physician of Pennsylvania stating that the applicant is free from all contagious and infectious diseases.

(3) General Provisions.

(a) No licensed masseur, master or apprentice shall operate or massage persons while suffering from a contagious or infectious disease, neither shall he serve any person afflicted with such diseases.

(b) All licensees shall conspicuously display their certificate of registration or license.

(c) At least one (1) licensed master shall be in attendance at all times during the operation of a licensed establishment. This shall become effective thirty (30) days after the results of the administration of the first examination of masters.]

§ 9-611. *Massage Therapists.*

(1) *Purpose.* As stated in Section 9-610(1) of this Code.

(2) *Definitions.*

(a) *Healing Arts. The science and skill of diagnosis and treatment in any manner whatsoever of disease of any ailment of the human body.*

(b) *Human trafficking related offense. A conviction of an offense listed under any of the following, or a conviction under any substantially similar law in any other United States state, territory or federal court:*

18 Pa.C.S. Chapter 30 (relating to Human Trafficking)

18 Pa.C.S. Chapter 31 (relating to sexual offenses)

18 Pa.C.S. § 4302 (relating to incest).

18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

18 Pa.C.S. § 5903 (relating to obscene and other sexual materials and performances)

18 Pa.C.S. § 6301 (relating to corruption of minors)

18 Pa.C.S. § 6312 (relating to sexual abuse of children)

18 Pa.C.S. § 6318 (relating to unlawful contact with minor)

18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(c) *Massage Therapist. An individual licensed by the Pennsylvania State Board of Massage Therapy to practice massage therapy.*

(d) *Massage Therapy. The application of a system of structured touch, pressure, movement, holding and treatment of the soft tissue manifestations of the human body in which the primary intent is to enhance the health and well-being of the client without limitation, except as provided in this act. The term includes the external application of water, heat, cold, lubricants or other topical preparations, lymphatic techniques, myofascial release techniques and the use of electro-mechanical devices which mimic or enhance the action of the massage techniques. The term does not include the diagnosis or treatment of impairment, illness, disease or disability, a medical procedure, a chiropractic manipulation - adjustment, physical therapy mobilization - manual therapy, therapeutic exercise, electrical stimulation, ultrasound or prescription of medicines for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry or other practice of the healing arts is required.*

(3) *General Provisions.*

(a) *No person shall be employed as a massage therapist, or engage in massage therapy, who is not registered to practice with the Department.*

(b) *No person who has been convicted of a human trafficking offense within the past 10 years may be employed as a massage therapist or perform massage therapy.*

(4) *Registration. Applicants for registration must submit the following:*

(i) *A copy of the applicant's Pennsylvania instant criminal history check (PICS) and National Instant Criminal Background Check (NICS) dated within 60 days of the date of application;*

(ii) *A health certificate issued by a registered physician of Pennsylvania, or any other state, performed with the past 60 days;*

(iii) *A copy of the applicant's current Pennsylvania state massage therapy license;*

(iv) *A registration fee of one hundred dollars (\$100);*

(v) *Any other documents that the Department of Public Health deems relevant.*

(5) *Penalties. Any person violating any portion this Section shall pay a fine of at least \$200, but not more than \$2000. The Department of Public Health shall report all violations of this Section to the Pennsylvania State Board of Massage Therapy.*

(6) *Regulations and Inspections. Administrative inspections shall be performed by the Department of Public Health. The Department Licenses and Inspections shall administer the registry and work cooperatively with the Department of Public Health in issuing regulations to implement this Section.*

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SECTION 3. Section 10-1103 of The Philadelphia Code is amended to read as follows:

§ 10-1103. Prohibited Conduct.

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(3) [Massage Parlors and Model Studios.

(a) No person shall own, operate or maintain any massage parlor or model studio, which, as

a regular course of business, is used for the purpose of lewdness, assignation or prostitution, and every such massage parlor or model studio in or upon which acts of lewdness, assignation or prostitution are held or occur, is declared to be a public nuisance.

(1) "Massage", as used in this subsection, shall mean any method of treating the superficial soft parts of the human body for remedial, hygienic or other purposes, consisting of rubbing, stroking, kneading, or any similar treatment, accomplished by hand, or by the use of any instrument.

(2) "Massage Parlor" shall mean any building or structure or portion thereof, located within the City, which is open to members of the general public with or without the payment of a fee at which massage services are offered.] *Reserved.*

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SECTION 4. Section 14-601 of The Philadelphia Code is amended to read as follows:

§ 14-601. Use Categories.

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(7) Commercial Services Use Category.

This category includes uses that provide for consumer or business services, for the repair and maintenance of a wide variety of products, and for entertainment. The commercial services subcategories are:

(a) Adult-Oriented Service.

Any of the following:

* * *

.5) Adult Massage Shop.

An establishment having a source of income or compensation derived from the practice of any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulation of, external parts of the human body with the hands or with the aid of any mechanical, electric apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotion, ointment, or other similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third

person on his or her behalf will pay money or give any other consideration or gratuity. The term "massage shop" does not include any establishment operated by a medical practitioner, professional physical therapist, *a massage therapist business licensed by the City*, or massage therapist licensed by the state *and registered by the City*.

SECTION 5. Sections 1, 2, and 3 of this Ordinance will become effective 180 days from enactment. The Department shall publish regulations implementing this Ordinance within 90 days of enactment.

Explanation:

[Brackets] indicates matter deleted.

Italics indicate new matter added.