

AN ORDINANCE

Ordinance No. 1/7

Section 1. Statement of Purpose and Intent

The Council of the Borough of Castle Shannon (hereinafter referred to as "Council") finds that the operation of massage establishments within the Borough of Castle Shannon (hereinafter referred to as "Borough") presents potential dangers to the health, safety, morals and welfare of the citizens of the Borough. To protect and preserve these values and the quality of life, enjoyment of property, commercial atmosphere and total individual and community integrity of the Borough, the Council hereby enacts this ordinance and the regulating measures contained herein.

Section 2. Definitions

For the purpose of this ordinance, unless the particular provisions or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of the following words and phrases.

- (a) "Borough." The Borough of Castle Shannon.
- (b) "Council." The Council of the Borough of Castle Shannon
- (c) "Employee." Any person over eighteen (18) years of age, other than a massagist, who renders any service in connection with the operation of a massage business and receives compensation from the operator of the business or patrons.
- (d) "Licensee." The person to whom a license has been issued to own or operate a massage establishment as defined herein.
- (e) "Massage." Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such 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 any gratuity therefor.

- (f) "Massage Establishment." Any establishment having a source of income or compensation derived from the practice of massage as defined in Subsection (e), and which has a fixed place of business where any person, firm, association or corporation engages in or carries on any of the activities as defined in Subsection (e).
- (g) "Massacist, Masseur or Masseuse." Any person who, for any consideration whatsoever, engages in the practice of massage as defined in Subsection (e).
- (h) "Outcall Massage Service." Any business, the function of which is to engage in or carry on massages at a location designated by the customer or client rather than at a massage establishment as defined in Subsection (f).
- (i) "Patron." Any person over eighteen (18) years of age who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.
- (j) "Permittee." The person to whom a permit has been issued to act in the capacity of a massagist (masseur or masseuse) as herein defined.
- (k) "Person." Any individual, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.
- (1) "Recognized School." Any school or educational institution licensed to do business as a school or educational institution in the State in which it is located, or any school recognized by or approved by or affiliated with the American Massage and Therapy Association, Inc. and which has for its purpose the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study not less than seventy (70) hours before the student shall be furnished with a diploma or certificate of graduation from such school or **institution of learning** following the successful completion of such course of study or **learning**.

- (m) "Sexual or Genital Area." Genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

Section 3. Permit required.

- (a) **Business license required.** No person shall engage in or carry out the business of massage unless he has a valid massage business license issued by the Borough pursuant to the provisions of this ordinance for each and every separate office or place of business conducted by such person.
- (b) **Massacist's permit required.** No person shall practice massage as a massagist, employee or otherwise, unless he has a valid- and subsisting massacist's permit issued to him by the Borough pursuant to the previsions of this ordinance.

Section 4. Exemptions.

This ordinance shall not apply to the following individuals while engaged in the personal. performance of the duties of their respective professions:

- (a) Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the Commonwealth of Pennsylvania.
- (b) Nurses who are registered under the laws of this State.
- (c) Barbers and beauticians who are duly licensed under the laws of this State, except that this exemption shall apply solely to the massaging of the neck, face, scalp and hair of the customer or client for cosmetic or beautifying purposes.

Section 5. Application for Massage Establishment License.

Every applicant for a license to maintain, operate, or conduct a massage establishment shall file an application under oath with the Borough upon a form provided by the Borough and pay a nonrefundable annual license fee which shall be \$100 per year or any part thereof. The application, once accepted, shall be referred to the Building Inspector for investigation, who shall within thirty (30) days inspect the premises proposed to be operated as a massage establishment and shall make written verification to Council concerning compliance with the codes of the Borough. The application shall further be referred to the

Police Department for investigation of the applicant's character and qualifications. Each application shall contain the following information:

- (a) A definition of service to be provided.
- (b) The location, mailing address and all telephone numbers where the business is to be conducted.
- (c) The name and residence address of each applicant (hereinafter all provisions which refer to applicant include an applicant which may be a corporation or partnership).
 - (1) If applicant is a corporation, the names and residence addresses of each of the officers and directors of said corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation, and the address of the corporation itself, if different from the address of the massage establishment.
 - (2) If applicant is a partnership, the names and residence addresses of each of the partners including limited partners, and the address of the partnership itself, if different from the address of the massage establishment.
- (d) The two (2) previous addresses immediately prior to the present address of the applicant.
- (e) Proof that the applicant is at least eighteen (18) years of age.
- (f) Individual or partnership applicant's height, weight, color of eyes and hair, and sex.
- (g) Copy of identification such as driver's license and social security card.
- (h) One portrait photograph of the applicant at least two (2) inches by two (2) inches and a **complete set of** applicant's fingerprints which shall be taken by the Chief of Police or his agent. If the applicant is a corporation, one portrait photograph at least two (2) inches by two (2) inches of all officers and managing agents of said corporation and a **complete** set of the same officers' and agents' fingerprints which shall be taken by the Chief of Police or his agent. If the applicant is a partnership, one front-face portrait photograph at least two (2) inches by two (2) inches in

size of each partner, including a limited partner in said partnership, and a complete set of each partner or limited partner's fingerprints which shall be taken by the Chief of Police or his agents.

- (i) 7SiM85S, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application.
- (j) The massage or similar business license history of the applicant; whether such person, in previously operating in this Borough or another City or State has had a business license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.
- (k) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the **crimes and place convicted**.
- (l) The name and address of each massagist who is or will be employed in said establishment.
- (m) Applicant must furnish a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession **and work of massage is** taught, provided, however, that if the applicant will not himself engage in the practice of massage as defined herein, he need not possess such diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught.
- (n) The name and address Of any massage business or other establishment owned or operated by any person whose name is required to be given in Subsection (c) wherein the business or profession of massage is carried on.
- (o) A description of any other business to be operated on the same **premises or on adjoining premises owned or** controlled by the applicant.
- (p) Authorization for the Borough, 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 permit.

- (c) Such other identification and information necessary to discover the truth of the matters here in fore specified as required to be set forth in the application.
- (r) The names, current addresses and written statements of at least three (3) bonafide permanent residents of the United States that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the Borough, then the Count-7, then the Commonwealth of Pennsylvania, and lastly from the rest of the United States. These references must be persons other than relatives and business associates.

Upon the cc⁻¹=⁻⁴on of the above provided form and the furnishing of all foregoing information the Building inspector shall accept the application for the necessary investigations. The holder of a massage establishment license shall notify the Building Inspector of each change in any of the data required to be furnished by this Section within ten (10) days after such change occurs.

Section G. Application for Masseclist's Permits.

Application for a massagist's business permit shall be made to the Borough in the same manner as provided above for massage establishment licenses, accompanied by the annual nonrefundable massagist's permit fee of \$75 per year or part thereof. The application shall contain but not be limited to the following:

- (a) The business address and all telephone numbers where the massage is to be practiced.
- (b) Name and residence address, and all names, nicknames and aliases by which the applicant has been known, including the two previous addresses immediately prior to the present address of the applicant.
- (c) Social Security number, driver's license number, if any, and date of birth.
- (d) Applicant's weight, height, color of hair and eyes, and sex.
- (e) Written evidence that the applicant is at least eighteen (18) years of age.

- (f) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance, except misdemeanor traffic violations.
- (g) Fingerprints of the applicant taken by the Police Department.
- (h) Two front-face portrait photographs taken within thirty (30) days of the date of application and at least two (2) inches by two (2) inches in size.
- (i) The name and address of the recognized school attended, the dates attended and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has completed not less than seventy (70) hours of instruction. For persons presently employed as a masseur or masseuse in the Borough, this subsection shall not apply until May 31, 19E3; present employment shall be established by sworn affidavit from the employer; after which time such person must be actively engaged, enrolled, or participating in a course of study designed to fulfill the requirements of this Section and which is certified to by an official of the approved school. The burden of establishing such active engagement, enrollment or participation shall be upon the person seeking a permit herein. For persons not so employed, this Section shall be effective upon passage. In no event shall any person with the purview of this Ordinance act as aforesaid without satisfying the training requirement set forth with the Borough after September 1, 1988.
- (j) The massage or similar business history and experience for 10 years prior to the date of application, including but not limited to whether or not such person in previously operating in this or another City or State under license or permit has had such license or permit denied, revoked, or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation.
- (k) The names, current addresses and written statements of at least five (5) bonafide permanent residents other than relatives, of the United States that the applicant is of good moral character. if the applicant is able, the statement must first be furnished from residents of the City, then the County, then the Commonwealth of Pennsylvania and lastly from the rest of the United States.

- (1) A medical certificate signed by a physician, licensed to practice in the Commonwealth of **Pennsylvania**, within seven (7) days of the date of **the application**. The certificate shall state that the applicant was examined by the certifying physician and that the applicant is free of communicable disease. The additional **information** required by this Subsection shall be **provided** at the applicant's expense.
- (m) Such other information, identification and physical **examination** of the person deemed necessary by the Police Chief in order to discover the truth of the matters hereinbefore required to be set forth in the application.
- (n) Authorization for the Borough, 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 permit.
- (o) 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 Borough.

Section 7. Issuance of License or Permit for a Massage Establishment.

The Borough shall issue a license for a massage establishment or a permit for a masseur or masseuse, after ratification by the Council of the Borough, **if all requirements** for a massage establishment or massagist permit described in this Ordinance are met unless it finds:

- (a) The correct permit or **license** fee has not **been tendered** to the **City, and, in the** case of a check, or bank draft, honored **with payment upon presentation**.
- (b) The operation, as proposed by the applicant, if permitted, would **not comply with all applicable laws**, including, but not limited to, **the Borough's building, zoning, and health** regulations.
- (c) **The applicant, if an individual; or any of the stockholders holding more than ten percent (10%) of the stock of 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; or the holder of any lien, of any nature, upon the business and/or the equipment**

used therein; and the manager or other person principally in charge of the operation of the business, have been convicted of any of the following offenses or convicted of an offense without the Commonwealth of Pennsylvania that would have constituted any of the following offenses if committed within the Commonwealth of Pennsylvania:

- (1) An offense involving the use of force and violence upon the person of another that amounts to a felony.
- (2) An offense involve sexual misconduct.
- (3) An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony.

The Borough may issue a license or permit to any person convicted of any of the crimes described in Subsections (1), (2), or (3) of this Section if it finds that such conviction occurred at least five (5.) years prior to the date of the application and the applicant has had no subsequent felony convictions of any nature and no subsequent misdemeanor convictions for crime mentioned in this Section.

- (d) The applicant has knowingly made. any false, misleading, or fraudulent statement of **fact in the permit application or in any document required by the City in conjunction therewith.**
- (e) **The applicant has had a massage business, masseur, or other similar permit or license denied, revoked, or suspended by the City or any other State or local agency within five (5) years prior to the date of the application.**
- (f) The applicant, if an individual, or 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, is not over the age of eighteen (18) years.**

Section 8. Approval or Denial of Application.

The Borough shall act to approve or deny an application for a license or permit **under this Ordinance within a reasonable period of time and in no event shall the Borough act to approve or deny said license or permit later than 120 days from the date that said application was accepted by the Borough.** Every license

or permit issued pursuant to this Ordinance will terminate at the expiration of one year from the date of its issuance unless sooner suspended or revoked.

Section 9. Waiver of Application Requirements.

The Borough shall waive the requirements of Sections .5(m) and 6(i) of this Ordinance if the applicant furnishes satisfactory evidence that he or she attended not less than seventy (70) hours of instruction in a school within or without this State or in any foreign country that provides education substantially equal to or in excess of the educational requirements of this Ordinance.

Section 10. Multiple Massage Establishments.

Should any massage business have more than one location where the business of massage is pursued, then a permit, stating both the address of the **principal** place of business, and of the other location(s) shall be issued by the Borough upon the tender of a license fee of \$100 for each location. Licenses issued for other locations shall terminate on the same date as that of the principal place of business, regardless of the date of issuance.

Section 11. Posting of License.

- (a) Every massagist shall post the permit required by this Ordinance in his work area.
- (b) Every person, corporation, **partnership**, or association licensed under this Ordinance shall display such license in a prominent place.

Section 12. Register of Employees.

The licensee or person designated by the licensee of a **massage** establishment shall maintain a register of all persons employed at any time as masseurs or masseuses and their permit numbers. Such register shall be available at the massage establishment to representatives of the Borough during regular business hours.

Section 13. Revocation or Suspension of License.

Any license issued for a massage establishment may be revoked or suspended by the Borough after notice and a hearing, for good cause, or in any case where any of the provisions of this Ordinance are violated or where any employee of the licensee, including a masseur or masseuse is engaged in any conduct which violates any of the State or local laws or ordinances at licensee's place of business and the licensee has

actual or constructive knowledge by due diligence. Such permit may also be revoked or suspended by the Borough after notice and hearing, upon the recommendations of the County Health Department that such business is being managed, conducted or maintained without regard to proper sanitation and hygiene.

Section 14. Revocation of Masseur or Masseuse Permit.

After notice and a hearing, a masseur or masseuse permit issued by the Borough shall be revoked or suspended where it appears that the masseur or masseuse has been convicted of any offense which would be cause for denial of a permit upon an original application, has made a false statement on an application for a permit, or has committed an act in violation of this Ordinance.

Section 15. Facilities Necessary.

No license to conduct a massage establishment shall be issued unless an inspection by the Borough reveals that the establishment complies with each of the following minimum requirements:

- (a) Construction of rooms used for toilets, tubs, steam baths and showers shall be made waterproof with approved waterproofed materials and shall be installed in accordance with the Borough Building Code.
 - (1) Steam rooms and shower compartments shall have waterproof floors, walls and ceilings approved by the Borough.
 - (2) A source of hot water must be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.
- (b) The premises shall have adequate equipment for disinfecting and sterilizing non disposable instruments and materials used in administering **massages**. **Such non disposable** instruments and materials shall be disinfected after use **on each** patron.
- (c) Closed cabinets shall be provided and used for the storage of clean linen, towels and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.

- (d) Toilet facilities shall be provided in convenient locations. When employees and patrons of different sexes are on the premises at the same time separate toilet facilities shall be provided for each sex. A single water closet per sex shall be provided for each twenty (20) or more employees or patrons of that sex on the premises at any one time. urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the sex accommodated therein.
- (e) Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels.

Section 15. Operation Requirements.

- (a) Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.
- (b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.
- (c) All employees, including masseurs and masseuses, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas, whose use is restricted to the massage establishment. A separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.
- (d) All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in a sanitary manner.
- (e) No massage establishment granted a license under the provisions of this Ordinance shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture, or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services.

Section 17. Persons Under Age 18 Prohibited on Premises.

No person shall permit any person under the age of eighteen (18) years to come or remain on the premises of any massage business establishment, as masseur, employee, or patron, unless such person is on the premises on lawful business.

Section 18. Alcoholic Beverages Prohibited.

No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage business.

Section 19. Hours.

No massage business shall be kept open for any purpose between the hours of 10:00 P.M. and 8:00 A.M.

Section 20. Employment of Massagist.

No person shall employ as a massagist any person unless said employee has obtained and has in effect a permit issued pursuant to this Ordinance.

Section 21. Inspection Required.

The Chief of Police or his authorized representatives shall from time to time make inspection of each massage business establishment for **the purposes** of determining that the provisions of this Ordinance are fully complied with.

Section 22. Unlawful Acts.

- (a) It shall be unlawful for any person, in a massage parlor, to place his or hand or hands upon, **to touch** with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital part of any other person. Sexual or genital parts shall include the genitals, pubic **area, buttocks, anus, or** perineum of any person, or the vulva or breasts of a female.
- (b) It shall be unlawful for any person, in a massage parlor, to expose his or her **sexual or genital parts**, or any portion thereof, to any other person. It shall also be unlawful for any person, in a massage parlor, to expose the sexual or genital parts, or any portions thereof, of any other person.

- (c) shall be unlawful for any person, while in the presence of any other person in a massage parlor, to fail to conceal with a fully opaque covering, the sexual or genital parts of his or her body.
- (d) shall be unlawful for any person owning, operating or managing a massage parlor, knowingly to cause, allow or permit in or about such massage parlor, any agent, employee, or any other person under his control or supervision to perform such acts prohibited in Subsections (a), (b) or (C) of this Section.
- (e) It shall be further unlawful for any permittee under this Ordinance to administer massage on an outcall basis as defined in Section 2(h). Such person shall administer massage solely within an establishment licensed to carry on such business under this Ordinance. Any violation of these provisions shall be deemed grounds for revocation of the permit granted hereunder. The restriction on outcall massage shall not apply to a permittee who performs outcall massage as defined herein upon a customer or client who, because of reasons of physical defects or incapacities or due to illness is physically unable to travel to the massage establishment. If any outcall massage is performed under this exception, a record of the date and hour of each treatment, and the name and address of the customer or client, and the name of the employee administering such treatment and the type of treatment administered, as well as the nature of the physical defect, incapacity or illness of said client or customer shall be kept by the licensee or person or employee designated by the licensee. Such records shall be open to inspection by officials charged with the enforcement of public health laws. The information furnished or secured as a result of any such inspection shall be confidential. Any unauthorized disclosure or use of such information by an employee of the business or the Borough shall be unlawful.
- (g) It shall be unlawful for any massage service to be carried on within any cubicle, room, booth, or any area within a massage establishment which is fitted with a door capable of being looked.
- (h) Nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof, whenever such inspection is deemed necessary by the police or health departments.

Section 23. Sale or Transfer or Change of Location.

Upon sale, transfer or relocation of a massage establishment, the license therefor shall be null and void unless approved as provided in Section 7 provided, however, that upon the death or incapacity of the licensee or any co-licensee of the massage establishment, any heir or devisee of a deceased licensee, or any guardian of an heir or devisee of a deceased licensee, may continue the business of the massage establishment for a reasonable period of time not to exceed sixty (60) days to allow for an orderly transfer of the license.

Section 24. Name and Place of Business.

No person granted a license pursuant to this **Ordinance shall** operate the massage establishment under a name not specified in his license, nor shall he conduct business under any designation or location not specified in his license.

Section 25. Transfer of License.

No license or permit shall be **transferable except** with the consent of the Borough and ratified by the Council. An application for such transfer shall be in writing and shall be accompanied by fees prescribed in Section 5 and 6. The **written** application for such transfer shall contain the same information as requested herein for initial application for the license or **permit.**

Section 26. Violation and Penalty.

Every person, except those persons who are specifically exempted by this Ordinance, whether acting as an individual owner, employee of the owner, operator or employee of the operator, or whether acting as a mere agent or independent contractor for the owner, employee or **operator, or acting as a participant or worker in any way** directly or indirectly who gives massages or operates a massage establishment or any of the services defined in this Ordinance without first obtaining a **license or permit** and paying a fee to do so from the Borough or shall violate any provisions **of this Ordinance shall** be guilty of a misdemeanor and upon conviction such person shall be punished **by a fine not to exceed \$500 or by imprisonment for a period not to exceed six (6) months or by both such fine and imprisonment.**

Section 27. Separability.

- (a) If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held **invalid** or unconstitutional by any Court **of competent jurisdiction,** such portion shall be deemed a separate,

distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

- (b) All ordinances in conflict herewith are hereby repealed.
- (c) This ordinance shall be in full force and effect from and after its passage, provided, however, any person, partnership, corporation or association engaged in the operation of a massage business and every person engaged in the business or profession of massage, at the time of the enactment of this ordinance shall have ninety (90) days in which to comply with the licensing provisions of this Ordinance.

Section 28. Repeal of Conflicting Ordinances

All existing ordinances including the existing Borough of Castle Shannon Zoning Ordinance as amended, or parts of ordinances, which are contrary to the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect.

Section 29. Effective date.

Except as previously set forth herein, this ordinance shall be effective upon enactment.

Enacted into law this _____ 1/ _____ • day of _____
1988.

ATTEST:



Borough Secretary



President of Council
Castle Shannon Borough

Examined and approved this 11
1988.

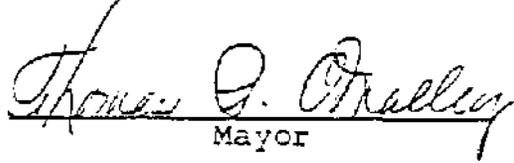
day of

January

ATTEST



Borough Secretary


Mayor