

Chapter 197

MASSAGE ESTABLISHMENTS

[HISTORY: Adopted by the Board of Trustees of the Village of Port Byron 3-18-1996 by Ord. No. 96-18-3 (Title 2, Ch. 2, Art. 16, of the 1993 Code). Amendments noted where applicable.]

GENERAL REFERENCES

Building construction codes — See Ch. 124.

Licenses and permits — See Ch. 190.

Sanitary Code — See Ch. 235.

§ 197-1. Definitions.

For the purpose of this chapter, the following terms shall have the meanings ascribed to them in this section:

EMPLOYEES — Any and all persons, other than the masseurs or masseuses, who render any service to the licensee, who receive compensation directly from the licensee, and who have no physical contact with customers and clients.

HEALTH OFFICER — The Health Officer of the Village of Port Byron, the County of Rock Island, or authorized representative.

LICENSEE — The operator of a massage establishment.¹

MASSAGE — "Massage" or "massage therapy" means a system of structured palpation or movement of the soft tissue of the body. The system may include, but is not limited to, techniques such as effleurage or stroking and gliding, petrissage or kneading, tapotement or percussion, friction, vibration, compression, and stretching activities as they pertain to massage therapy. These techniques may be applied by a licensed massage therapist with or without the aid of lubricants, salt or herbal preparations, hydromassage, thermal massage, or a massage device that mimics or enhances the actions possible by human hands. The purpose of the practice of massage, as licensed under this Act,² is to enhance the general health and well-being of the mind and body of the recipient. "Massage" does not include the diagnosis of a specific pathology. "Massage" does not include those acts of physical therapy or therapeutic or corrective measures that are outside the scope of massage therapy practice as defined in this section.³

MASSAGE THERAPIST — Any person who practices or administers all or any of the following named subjects and who has made a study of the underlying principles of anatomy and physiology as generally included in a regular course of study by a

¹. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

². Editor's Note: "This Act" refers to Act 57, Massage Licensing Act, 225 ILCS 57/10.

³. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

recognized and approved school of massage: the art of body massage either by hands or with a mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring; the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower or cabinet baths. Variations of the following procedures are employed: touch, stroking, friction, kneading, vibration, percussion and medical gymnastics. Massage therapists shall not diagnose or treat classified diseases, nor practice spinal or other joint manipulations, nor prescribe medicines or drugs.

MASSAGE ESTABLISHMENTS — Any massage establishment or place of business wherein massage as to all or any one or more of the above-named subjects and methods of treatments, as defined in this section, is administered or used.

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

§ 197-2. Massage establishments to be licensed.

- A. It shall be unlawful for any person to operate or conduct any massage establishment without a massage establishment license issued pursuant to the provisions of this chapter.
- B. It shall be unlawful for a licensed massage establishment to employ any person as a massage establishment operator or massage therapist who does not meet the qualifications set forth in this chapter.
- C. It shall be unlawful for any person to engage in the practice, attempt to practice, or hold themselves forth as practicing massage, whether for a fee or gratuitously, or to conduct massage, who does not meet the qualifications set forth in this chapter.
- D. It shall be unlawful for a massage therapist to engage in the practice of massage or to conduct massage other than in a licensed massage establishment unless the massage has been prescribed for the person receiving same by a person exempt from licensing in § 197-3, and the person receiving same is medically incapable of visiting the massage establishment.

§ 197-3. Exceptions to provisions.

The requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to hospitals, nursing homes, sanitarium, physicians, surgeons, chiropractors, osteopaths or any nurse working under the supervision of a physician, surgeon, chiropractor or osteopath duly licensed to practice said respective professions in this state. Practical nurses or other persons without qualifications as massage therapists, whether employed by physicians, surgeons, chiropractors or osteopaths or not, may not render massage or massage procedures. 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 state.

§ 197-4. Application and fee.

- A. Any person desiring to obtain a license to operate a massage establishment shall make application to the Village Clerk, who shall refer all such applications to law enforcement, the Fire District, Building Inspector, and Rock Island County Health Department. These departments shall, within 30 days, inspect the premises proposed to be operated as a massage establishment and make written recommendations to the Village Clerk concerning compliance with the codes that they administer.⁴
- B. Within 10 days of receipt of the recommendations of the aforementioned departments, the Village Clerk shall notify the applicant that his/her application is granted, denied or held for further investigation. The period of such additional investigation shall not exceed an additional 30 days, unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the Village Clerk shall advise the applicant in writing whether the application is granted or denied.
- C. Whenever an application is denied or held for further investigation, the Village Clerk shall advise the applicant in writing of the reasons for such action.
- D. Each massage establishment license application shall be accompanied by a license fee as set by the Board of Trustees from time to time.⁵
- E. A license issued pursuant to this chapter shall be renewed annually and shall exist for a term of one year from the first day of April unless sooner suspended or revoked. At the end of the license term, the license shall expire and cease to be a license unless renewed. All persons who operate a massage establishment must file applications for renewal of licenses not more than two months nor less than one month prior to termination of an existing license.
- F. The failure or refusal of the applicant to promptly give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding the said application or his or her refusal to submit to or cooperate with any inspection required by this chapter shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Village Clerk.

§ 197-5. Contents of application, massage establishment.

- A. The application for a license to operate a massage establishment shall set forth the exact nature of the massage to be administered and the proposed place of business and facilities therefor.
- B. In addition to the foregoing, any applicant for a license, including any partner or limited partner of a partnership application, and any officer or director of a corporate applicant, and any stockholder holding more than 10% of the stock of a corporate applicant, shall furnish the following:

⁴. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

⁵. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

- (1) Full name and current address;
- (2) The two previous addresses of the applicant immediately prior to the current address;
- (3) Written proof that the applicant is at least 18 years of age;
- (4) Applicant's height, weight and color of eyes and hair;
- (5) The business, occupation or employment of the applicant for the three years immediately preceding the date of the application;
- (6) The massage or similar business license history of the applicant, including whether such person in previous operation in this or another area has had a license revoked or suspended, the reason therefor, and any business activity or occupation subsequent to the action of suspension or revocation;
- (7) All criminal or village ordinance violation convictions, forfeiture of bond on all charges, except minor traffic violations;
- (8) The names and credentials of all employees of the establishment (and there shall be a continuous obligation to notify the Village Clerk within 10 days after any employee is terminated or hired);
- (9) A set of plans of the building in which the business will be conducted to comply with the ordinance;
- (10) The address and phone number of the business; and
- (11) If the applicant is a corporation or a partner of a partnership is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, and any shareholders having more than ten-percent ownership in the corporation.

§ 197-6. Requirements for massage therapists. ⁶

Massage therapists employed by licensed massage establishments shall comply with the requirements of the Massage Licensing Act (225 ILCS 57/1 et seq.).

§ 197-7. Operating requirements.

- A. Cleanliness. Every portion of a massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition. Adequate equipment for disinfecting and sterilizing any instruments used for massage shall be provided and used after each massage.
- B. Employees, dressing rooms. All employees shall be clean and shall wear suitable clean outer garments whose use is restricted to the massage establishment. A separate dressing room for each sex must be available on the premises with individual lockers available for each employee and for each customer. Said lockers

⁶. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

shall be equipped with a key lock or number combination locking device. Doors to such dressing rooms shall open inward and shall be self-closing.

- C. Linens. All massage establishments shall be provided with clean laundered sheets and towels in sufficient quantity, which shall be laundered after each use thereof and stored in an approved sanitary manner. No towels or sheets shall be laundered or dried in any massage establishment unless such establishment is provided with approved laundry facilities for such laundry and drying. Approved receptacles shall be provided for the storage of soiled linens and paper towels. Closed cabinets shall be provided for the storage of clean linen.
- D. Bathrooms, etc. Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.
- E. Residential uses. Residential living will not be allowed within the building licensed as the massage establishment. Any room used for massage shall not be used for residential or sleeping purposes.
- F. Advertising. No massage establishment granted a license under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services as described in § 197-1 of this chapter, nor shall any massage establishment indicate in the text of advertising that any service is available other than those services as described in said section.
- G. Locked room. No massage service may be carried on within any cubicle, room, booth or any area within a massage establishment which is fitted with a door capable of being locked.

§ 197-8. Facilities necessary, limitations.

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

- A. A readable sign shall be posted at the main entrance identifying the establishment as a massage establishment, provided also that all such signs shall otherwise comply with the general sign requirements of the Village of Port Byron.
- B. 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 Village's Building Code. Plumbing fixtures shall be installed in accordance with the Village's Plumbing Code.⁷
 - (1) For toilet rooms, toilet room vestibules and rooms containing bathtubs, there shall be a waterproof floor covering, which will be carried up all walls to a

⁷. Editor's Note: See Ch. 124, Building Construction, Art. VII, Building Code.

height of at least six inches. Floors shall be covered up on bases with at least three-fourths-inch cover. The walls of all toilet rooms and rooms containing bathtubs shall be finished to a height of six feet with a smooth, nonabsorbent finish surface of Keene cement, tile or similar material.

- (2) Steam rooms and shower compartments shall have waterproof floors, walls and ceilings approved by the Building Inspector.
 - (3) Floors of wet and dry heat rooms shall be adequately pitched to one or more floor drains properly connected to the sewer. (Exception: Dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.)
 - (4) A source of hot water must be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.
- C. Toilet facilities shall be provided in convenient locations. When five or more employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. A single water closet per sex shall be provided for each 20 or more employees or patrons of that sex on the premises at any one time. Urinal may be substituted for water closets after one water closet has been provided. All toilet rooms shall be equipped with self-closing doors opening in the direction of ingress to the toilet rooms. Toilets shall be designated as to the sex accommodated therein.
- D. Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or the vestibule. Lavatories or washbasins shall be provided with soap in a dispenser and with sanitary towels.
- E. Minimum lighting and ventilation shall be provided in accordance with the Uniform Building Code and, additionally, at least one artificial light of not less than 100 watts shall be lit in each enclosed room, cubicle or booth while massage services are being rendered. All portions of massage establishments and baths shall be provided with adequate light and ventilation by means of windows or skylights with an area of not less than 1/8 of the total floor area or shall be provided with approved artificial light and a mechanical operating ventilation system. When windows or skylights are used for ventilation, at least 1/2 of the total required window area shall be operable. To allow for adequate ventilation, cubicles, rooms and areas provided for patrons' use not served directly by a required window, skylight or mechanical system of ventilation shall be constructed so that the height of the partitions does not exceed 75% of the floor-to-ceiling height of the area in which they are located.
- F. All electrical equipment shall be installed in accordance with the requirements of the Village's Electrical Code.⁸

§ 197-9. Issuance.

Upon payment of the application fee, submitting of all information required by the application, upon receipt of the recommendations of the departments referred to in § 197-

⁸. Editor's Note: See Ch. 124, Building Construction, Art. VII, Building Code.

4 of this chapter that the establishment is in compliance with all of the requirements of §§ 197-7 and 197-8 of this chapter, the Village Clerk shall issue a license to maintain, operate or conduct a massage establishment, unless he or she finds:

- A. It appears that any such applicant has deliberately falsified the application; or
- B. That the operation as proposed by the applicant, if permitted, would not have complied with all applicable laws, including but not limited to the building, health, planning, housing, zoning and fire codes of the Village; or
- C. That the applicant and any other person who will be directly or indirectly engaged in the management and operation of a massage establishment has been convicted of:
 - (1) A felony.
 - (2) An offense involving sexual misconduct with children.
 - (3) Prostitution, soliciting for a prostitute, pandering, keeping a place of prostitution or pimping.

§ 197-10. Nontransferability of license.

- A. All licenses issued hereunder are nontransferable; provided, however, a change of location of a massage establishment may be permitted pursuant to the provisions hereof.
- B. Upon the death or incapacity of the licensee, the massage establishment may continue in business for a reasonable time to allow for a new application to be submitted.⁹

§ 197-11. Display of license.¹⁰

Every person to whom a license shall have been granted shall display said license in a conspicuous place on the licensed premises.

§ 197-12. Change of location.¹¹

A change of location of the massage premises shall be approved by the Village Clerk, provided all general ordinances are complied with and the change of location fee as set by the Board of Trustees from time to time is first paid.¹²

§ 197-13. Hours of operation.¹³

⁹. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

¹⁰. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

¹¹. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

¹². Editor's Note: Original Section 13, Massage therapists to be registered, which immediately followed this section, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

¹³. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

Licensed massage establishments may only operate during the following hours:

- A. Monday through Saturday, inclusive: 7:00 a.m. to 11:00 p.m.
- B. Sunday hours shall be 11:00 a.m. to 10:00 p.m.

§ 197-14. Persons not to remain on premises after closing hours; exceptions.

- A. Except as otherwise provided in this section, no person holding a license issued pursuant to this chapter shall remain on the licensed premises after the closing hours, except:
 - (1) The licensee.
 - (2) A person on the licensee's payroll for purposes of cleanup.
- B. No person shall remain on the licensed premises one hour after the closing hours except the owner of the license.

§ 197-15. Inspection of establishment.

- A. During the business hours of the massage establishment, inspection of each massage establishment may be made for the purpose of determining that the provisions of this chapter are met. This includes inspections by law enforcement, the Fire District, Building Inspector and Rock Island County Public Health officials. Such inspections shall be made at reasonable times and in a reasonable manner.
- B. It shall be unlawful for any licensee to fail to allow such inspection officer access to the premises or to hinder such officer in any manner.

§ 197-16. Revocation; suspension of license.

- A. Any license issued for a massage establishment may be revoked or suspended by the Village Board, after a hearing for good cause, or temporarily suspended by law enforcement until a hearing by the Village Board in any case where any of the provisions of this chapter are violated or any employee of the licensee, including a massage therapist, is engaged in any conduct at the licensee's place of business which violates any of the provisions of this chapter or any state law which provides for imprisonment, and the licensee has actual or constructive knowledge of such violation or the licensee should have actual or constructive knowledge by due diligence, or where any applicant has made a false statement on an application for a license under this chapter, or in any case where the licensee refuses to permit any duly authorized police officer or inspector of the Village or the County to inspect the premises of operation therein. Such license may also be revoked or suspended by the Village Board, after hearing, upon the recommendations of a health officer of the Village or County that such business is being managed, conducted or

maintained without regard for the public health or health of patrons or customers or without due regard for proper sanitation or hygiene.¹⁴

- B. Any violation of this chapter by any employee of the licensee, including a massage therapist, shall be cause for suspension of the license for not more than 30 days in the first instance. Any subsequent violation of this chapter by any employee of the licensee, including a massage therapist, shall be cause for suspension or revocation of the license.
- C. No license shall be revoked until after due notice and a hearing shall have been held before the Village Board to determine just cause for such revocation. Notice of such hearing shall be given in writing and served at least 10 days prior to the date of the hearing thereon. The notice shall state the grounds of the complaint against the holder of such license and shall designate the time and place where such hearing shall be held. Said notice shall be served upon the license holder by delivering the same personally or by leaving such notice at the place of business or residence of the license holder or the licensed premises, in the custody of a person of suitable age and discretion. In the event the license holder cannot be found, and the service of such notice cannot be otherwise made in the manner herein provided, a copy of such notice shall be mailed, registered mail and postage fully paid, addressed to the license holder at the licensee's place of business or residence at least 10 days prior to the date of the hearing.
- D. When a license is temporarily suspended by law enforcement, a hearing shall be scheduled before the Village Board within 15 days. Notice of such hearing shall be served as required in Subsection C of this section.¹⁵

§ 197-17. Grounds for revocation and/or fines.

The massage establishment may be subject to fine, license revocation, or both a fine and license revocation; upon one or more of the following grounds, the massage therapist or other employee may be subject to fine:

- A. That the holder or employee is guilty of fraud in the practice of massage or fraud or deceit in being qualified for the practice of massage.
- B. That the holder or massage therapist has been convicted in a court of competent jurisdiction of a felony. The conviction of a felony shall be the conviction of any offense which, if committed within this state, would constitute a felony under the laws thereof.
- C. That the holder or massage therapist is engaged in the practice of massage under a false or assumed name or is impersonating another practitioner of a like or different name.

¹⁴. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

¹⁵. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

- D. That the holder or massage therapist is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate such person for the performance of the holder's professional duties.
- E. That the holder or massage therapist is guilty of fraudulent, false, misleading or deceptive advertising, or that said holder or massage therapist prescribes medicines or drugs or practices any other licensed profession without legal authority therefor.
- F. That the holder has been guilty of employing, allowing or permitting any unqualified person to perform massage, or who in conjunction with the massage establishment gives or administers or practices the giving or administering of baths as defined herein without first having been registered with the Village Clerk, in said holder's establishment.
- G. That liquor is being sold or consumed within the establishment.
- H. That the licensee or massage therapist has been convicted of prostitution, pandering, pimping or other offenses opposed to decency and morality.
- I. That any person, whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employee or operator, or acting as a participant or worker in any way, who touches another in the sexual or genital area, either physically, with any piece of equipment, or with any other item or in any other way.
- J. That the licensee or massage therapist is found to have violated any other section of this chapter.¹⁶

§ 197-18. Maintaining nuisance.

Any building used as a massage establishment in violation of this chapter with the intentional, knowing, reckless or negligent permission of the owner thereof, or the agent of the owner managing the building, together with all fixtures and other property used in violation of this chapter, is hereby declared to be a public nuisance. The building, fixtures and other property in violation will be dealt with in accordance with state law governing public nuisances.

§ 197-19. Violations and penalties.¹⁷

Any person, except those persons who are specifically exempted by this chapter, whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper of the operator, employee or operator, or acting as a participant or worker in any way, who violates any provision of this chapter, shall be subject to a fine in a sum not less than \$100 nor more than \$750 and shall, upon conviction, be guilty of a misdemeanor, punishable by imprisonment for not more than

¹⁶. Editor's Note: Original Section 19, Massagists practicing when provisions of chapter become effective, which immediately followed this section, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

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six months or by a fine not less than \$100 and not exceeding \$750, or both fine and imprisonment.