

UPPER GWYNEDD TOWNSHIP

ORDINANCE NO. 2023-01

AN ORDINANCE OF THE TOWNSHIP OF UPPER GWYNEDD, MONTGOMERY COUNTY, PENNSYLVANIA, AMENDING THE UPPER GWYNEDD TOWNSHIP CODE OF ORDINANCES AT CHAPTER 50 TO PROVIDE FOR THE REGULATION AND LICENSING OF ALTERNATIVE AND MASSAGE THERAPY ESTABLISHMENTS

CERTIFICATION

I, SANDRA BROOKLEY ZADELL, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT I AM THE TOWNSHIP MANAGER IN UPPER GWYNEDD TOWNSHIP, MONTGOMERY COUNTY, PA AND THAT ATTACHED HERETO IS A TRUE AND COMPLETE CORRECT COPY OF ORDINANCE NO. 2023-01.



Sandra Brookley Zadell, Township Manager
September 19, 2023

ENACTED: September 19, 2023

UPPER GWYNEDD TOWNSHIP

ORDINANCE NO. 2023-01

AN ORDINANCE OF THE TOWNSHIP OF UPPER GWYNEDD, MONTGOMERY COUNTY, PENNSYLVANIA, AMENDING THE UPPER GWYNEDD TOWNSHIP CODE OF ORDINANCES AT CHAPTER 50 TO PROVIDE FOR THE REGULATION AND LICENSING OF ALTERNATIVE AND MASSAGE THERAPY ESTABLISHMENTS

WHEREAS, The Board of Commissioners of Upper Gwynedd Township is duly empowered by the First Class Township Code, 53 P.S. § 55101, *et seq.*, to enact certain regulations relating to the public health, safety welfare of the residents of Upper Gwynedd Township;

WHEREAS, the First Class Township Code authorizes the Board of Commissioners to make, amend and adopt amendments to the Upper Gwynedd Code of Ordinances, as amended, that are consistent with the Constitution and laws of the Commonwealth that it deems necessary for the proper management and control of the Township and the best interests of its residents;

WHEREAS, the Board of Commissioners of Upper Gwynedd Township has determined that certain amendments to the Upper Gwynedd Township Code of Ordinances, as amended, are required for the orderly administration of the laws of Upper Gwynedd Township; and

WHEREAS, the Board of Commissioners has determined that the Code of Ordinances of the Township of Upper Gwynedd should be amended to create and enact Chapter 50 [Alternative and Massage Therapy Establishments] for the proper management, care and control of the Township and its finances and the maintenance of peace, good government, health and welfare of the Township and its residents.

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED by the Board of Commissioners of Upper Gwynedd Township, as follows:

SECTION 1. Creation of Chapter 50 [Alternative and Massage Therapy Establishments].

§ 50-1 Findings and Purpose.

The Board of Commissioners of Upper Gwynedd Township finds as follows:

- A. That certain illegal businesses or enterprises in the Township that offer massages and have the word "massage" and/or "spa" in the name of the business offer prostitution services and may involve human trafficking and otherwise violate the laws of the Commonwealth of Pennsylvania; and
- B. That unsanitary and otherwise unhealthful conditions have a propensity to exist in these unregulated businesses or enterprises; and
- C. That the Commonwealth of Pennsylvania regulates individuals that provide massages but does not regulate massage establishments or alternative therapy establishments; and
- D. That, based on Subsections A, B and C above, the close regulation of establishments that offer massages and alternative therapy as hereinafter defined, is necessary to protect the public health, safety and welfare of the residents, property owners, business owners and visitors to the Township.

§ 50-2 Definitions and Word Usage.

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

ALTERNATIVE THERAPY

- (1) The practice of an individual who uses touch to affect the energy systems, acupoints, Qi meridians or channels of energy of the human body while engaged within the scope of practice of a profession with established standards and ethics. Such practices include acupressure, Asian bodywork therapy, polarity therapy bodywork, quigon, reiki, shiatsu and tui na;
- (2) Reflexology;
- (3) The practice of an individual who uses touch, words and directed movement to deepen awareness of existing patterns of movement in the body and to suggest new possibilities of movement, while engaged within the scope of practice of a profession with established standards and ethics; and/or
- (4) Any massage-like activity that does not meet the definition of "massage therapy" set forth hereinafter.

ALTERNATIVE THERAPY ESTABLISHMENT

Any place in the Township alternative therapy is 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, and including barbershops or practices licensed by the Department of Cosmetology, or any athletic program of accredited junior and senior high schools or colleges in which a massage is administered by a trainer within the scope of such athletic program. Also sometimes referred to as "premises."

ALTERNATIVE THERAPY TECHNICIAN

Any person who administers alternative therapy to another as part of a massage business or alternative therapy business that is not licensed as such by the Commonwealth of Pennsylvania.

CODE ENFORCEMENT OFFICER

The Code Enforcement Officer of the Township of Upper Gwynedd, or their duly appointed and authorized representative.

MASSAGE THERAPIST

An individual licensed by the State Board of Massage Therapy to practice massage therapy.

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, or any other area licensed by the Commonwealth of Pennsylvania.

MASSAGE THERAPY ESTABLISHMENT

Any place in the Township where massage therapy is 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, and including barbershops or practices licensed by the Department of Cosmetology, or any athletic program of accredited junior and senior high schools or colleges in which a

massage is administered by a trainer within the scope of such athletic program. Also referred to as "premises."

PERSON

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

RECOGNIZED SCHOOL

Any school or educational institution licensed to operate as a school educational institution in the state in which it is located or any school recognized or approved by the American Massage and Therapy Association, Inc., or such other bona fide educational institution that provides education on massage therapy and/or alternative therapy. Such educational institution shall have the purpose of teaching the theory, method, profession or work of an alternative therapy, and issues a diploma or certificate of graduation.

SEXUAL OR GENITAL AREA

The genitals, pubic area, anus or perineum of any person, and the vulva and breasts of a female.

THERAPY

"Alternative therapy" or "massage therapy" as defined herein.

- B. Word Usage. In this article, any word used in the singular shall include the plural, any word used as a plural shall include the singular, and the masculine shall include the feminine and the neutral.

§ 50-3 License requirements; Fee.

- A. License requirements for massage establishments. Requirements for the issuance of a license as a massage establishment are as follows:
1. Licensing of massage establishments. All massage establishments must register with and be licensed by the Township. No massage establishment shall engage in massage business unless all massage therapists are licensed by the Commonwealth of Pennsylvania. The owner and/or operator of massage establishment shall register its business as well as all massage therapists and provide copies of the licenses issued by the Commonwealth of Pennsylvania for all massage therapists to the Township on a fully completed application provided by the Township. The application must be filed in person by the person seeking the license during regular business hours. The owner and operator of the massage establishment shall have an ongoing obligation to update the names of massage

therapists. The license fee for such license shall be determined from time to time by resolution of the Board of Commissioners.

2. All massage establishments must provide proof that all other required business licenses have been obtained and provide confirmation from the taxing entity that arrangements have been made for the payment of required business privilege tax, local service tax and/or earned income tax for its employees.

B. License requirements for alternative therapy establishments. Requirements for the issuance of a license as an alternative therapy establishment are as follows:

1. Licensing of alternative therapy establishments. All alternative therapy establishments must register with and be licensed by the Township. No alternative therapy establishment shall engage in alternative therapy business unless all alternative therapy technicians are licensed by the Township. The owner and/or operator of alternative therapy establishment shall register its business as well as all alternative therapy technicians on a fully completed application provided by the Township. The application must be filed in person by the person seeking the license during regular business hours. The owner and operator of the alternative therapy establishment shall have an ongoing obligation to update the names of alternative therapy technicians. The license fee for such license shall be determined from time to time by resolution of the Board of Commissioners.
2. All alternative therapy establishments must provide proof that all other required business licenses have been obtained and provide confirmation from the taxing entity that arrangements have been made for the payment of required business privilege tax, local service tax and/or earned income tax for its employees.

C. Licensing requirements for alternative therapy technicians. Requirements for the issuance of a license as an alternative therapy technician are as follows:

1. Fee and contents. Any person desiring to obtain a license to provide services as an alternative therapy technician shall submit an application to the Township. A fee shall accompany the submission of the application to defray the costs of administration and investigation. The amount of the fee the alternative therapy

technician license shall be set by resolution of the Board of Commissioners. The application must be filed in person by the person seeking the license during regular business hours. Applicant shall be required to identify the alternative therapy establishment where applicant will be employed.

2. Diploma or certification of graduation. Applicant must receive training and education and receive a diploma or certification of graduation from a recognized school. 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-month period for the purpose of enrolling and completing such course of study.
3. Investigation. Applications for licenses for alternative therapy technicians shall be referred to the Upper Gwynedd Township Police Department, which shall cause an investigation to be made and report the findings to the Code Enforcement Officer. Applicants shall cooperate with any investigation conducted pursuant to the provisions of this article and shall permit access to the proposed place of business and facilities in conjunction with such investigation. In addition, each applicant for licenses for an alternative therapy technician must submit the following:
 - i. Two (2) forms of identification issued by either the federal or state government with one containing a photograph.
 - ii. FBI criminal background check per the directions at FBI website (must be the sealed and unopened envelope from FBI).
 - iii. Certified state police criminal background check for the state in which they reside (must be notarized).
 - iv. Signed release permitting Upper Gwynedd Township Police to conduct local records check.

- D. Granting of license. Within sixty (60) days of the receipt of an application, required documents set forth above and fee, the Code Enforcement Officer shall either grant or deny the license applied for by the applicant. The license shall be granted, provided that applicant, as applicant's name as it appears on the application, has not been convicted of or entered a plea

of guilty to any felony or has pleaded guilty to a felony or has a felony charge currently pending or has forfeited bail or has been convicted of or pleaded guilty to a violation of Section 5902 of the Crimes Code of the Commonwealth of Pennsylvania, 18 Pa.C.S.A. § 5902, pertaining to prostitution and related offenses, or any law of any other jurisdiction involving sexual misconduct.

§ 50-4 Alternative Therapy Establishment and Massage
Establishment Premises Minimum Requirements.

Each massage establishment and alternative therapy establishment premises shall comply with the following minimum requirements:

- A. The premises shall have adequate equipment for disinfecting instruments and materials. Such instruments and materials shall be disinfected after every use.
- B. All tables, bathtubs, shower stalls, steam rooms, sauna rooms, bath areas and floors shall have surfaces which may be readily disinfected. Surfaces of all tables or other apparatus used to perform massages or alternative therapies shall be of a nonporous material that can be disinfected after each use.
- 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. The premises shall have a minimum of one toilet and one washbasin.
- F. Treatment rooms shall be at least fifty (50) square feet of floor area and shall maintain a light level of no less than twenty (20) footcandles as metered at three feet above the surface of the floor (for illustrative purposes only, such light level is equivalent to light from a single forty-watt fluorescent lightbulb in the fifty-square-foot room). Such rooms shall contain a door incapable of being locked from either the exterior or the interior.
- G. The main entrance to the premises must remained unlocked and opened to the public during regular business hours. All massage establishments

and alternative therapy establishments shall be subject to unannounced inspections by the Township.

- H. The premises must comply with applicable ordinances of the Township, including but not limited to the building, fire prevention and zoning ordinances of the Township.

§ 50-5 Alternative Therapy Establishment and Massage
Establishment Operation Minimum Requirements.

Every massage establishment and every massage therapist and every alternative therapy establishment and alternative therapy technician shall comply with the following minimum requirements:

- A. Prohibited conduct. Only employees of the respective establishments may offer and provide therapy to clients. Independent contractors are specifically prohibited.
- B. Therapies may commence operation no earlier than 7:00 a.m. The hours of operation shall extend no later than 10:00 p.m.
- C. All licenses issued by the Township or Commonwealth of Pennsylvania shall be on display and available for inspection. Price rates charged for any and all therapies 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 therapy or alternative therapy unless accompanied at all times by a parent or legal guardian.
- E. There shall be an adequate supply of clean towels, linens and coverings. Towels, linens and coverings shall not be used by or on more than one patron unless they have first been laundered and disinfected. Disposable towels, linens and coverings shall not be used by or on more than one patron. Soiled towels, linens and coverings shall be deposited in approved receptacles; disposable items shall not be deposited in the same receptacle as non-disposable items.
- F. Instruments used in administering therapies shall not be used on more than one patron unless they have first been disinfected. Table pads and reusable table coverings shall be disinfected after each use.

- G. The owner, licensee or duly authorized manager shall be on duty at all times during the hours an establishment is open for business.
- H. Other than while the premises is open for business, eating or drinking shall not be permitted on the premises. The sale and/or the serving of alcoholic beverages shall be strictly prohibited at all times unless duly licensed by the Commonwealth of Pennsylvania.
- I. Animals, except for guide and service animals for the handicapped, shall not be permitted within the premises.
- J. All employees must be at all times 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.
- K. No patron or persons, other than employees of the establishment, shall remain on the premises more than one hour after closing. The premises shall not be used as a dwelling unit and may not have a stove or other food preparation appliances in the premises.
- L. Massage therapists and alternative therapy technicians shall wash their hands immediately prior to and subsequent of the administration of any therapies and shall observe hygiene practices as set forth in the Pennsylvania Massage Law, 65 P.S. § 627.1, *et seq.*, and accompanying regulations in Chapter 20 of the Pennsylvania Code.
- M. It shall be unlawful for any person providing therapies to place their hands upon, touch, fondle or otherwise have any physical contact with, including massaging a sexual or genital area of any other person or to offer to so touch any person in a sexual or genital area. It shall be unlawful for any person providing therapies to expose their sexual or genital area to any other person.
- N. For the purposes of ascertaining violations of this ordinance and conducting routine inspections, federal, state and county officials, the Code Enforcement Officer, deputy code enforcement officers (Township employees in the Code Enforcement Department or appointed contractor), health inspectors, building inspectors, the Fire Marshal or duly authorized fire code inspectors of the Township, or police officers of the Upper Gwynedd Township Police Department shall have the right of entry into the premises of any massage establishment or alternative therapy establishment during the hours such respective establishment is open for

business or occupied during such hours permitted pursuant to this Chapter.

§ 50-6 Sale or Transfer of License.

No license issued under the provisions of this article shall be transferable or assignable.

§ 50-7 Revocation of License.

Every license issued under the provisions of this article is subject to revocation for violation of any of the provisions of this article. Said license may be revoked by the Code Enforcement Officer 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 Commissioners and request a hearing. Notice of revocation shall be given in writing and shall be served at least 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 Township Board of Commissioners and the license holder shall have the right to be represented at such hearing and to produce evidence.

§ 50-8 Expiration of License.

All licenses issued pursuant to the provisions of this article shall be valid for one (1) calendar year and shall expire on December 31st of each calendar year. No later than one month prior to the expiration, licensees shall make application for renewal of said license.

§ 50-9 Violations and Penalties.

In addition to the refusal or revocation of a license as provided under this article, any violation of this article shall be enforced by action brought before a District Justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. Any person, firm or corporation who shall violate any provision of this article shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000 and/or to imprisonment for a term not to exceed ten (10) days. Each day that a violation of this article continues, or each section of this article which shall be found to have been violated, shall constitute a separate offense. For purposes of this article, the doing of any act or thing prohibited by any provision of this article, or the failure to do any act or thing as to which any provision of this article creates an affirmative duty, shall constitute a violation of this article punishable as herein stated. It shall be an affirmative defense that the violation alleged occurred without the knowledge of or outside the control of such owner of the property.

§ 50-10 Time for Compliance.

Massage establishments, alternative therapy establishments and alternative therapy technicians operating in the Township of Upper Gwynedd as of the time of the effective date of this article shall have sixty (60) days from said effective date in which to comply with the provisions of this article.

SECTION 2. Repeal and Ratification.

All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. Any other terms and provisions of the Township's Code unaffected by this Ordinance are hereby reaffirmed and ratified.

SECTION 3. Severability.

Should any section, paragraph, sentence, clause, or phrase in this Ordinance be declared unconstitutional or invalid for any reason, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and affect, and for this reason the provisions of this Ordinance shall be severable.

SECTION 4. Effective Date.

This Ordinance shall become effective five (5) days after enactment.

ORDAINED AND ENACTED this 19th day of September 2023, by the Upper Gwynedd Township Board of Commissioners.

Attested by:



SANDRA BROOKLEY ZADELL
Manager

**UPPER GWYNEDD TOWNSHIP
BOARD OF COMMISSIONERS**



DENISE HULL
President

