



## STAFF REPORT

*Public Hearing 9-5-23*

AGENDA ITEM #: 23-92  
COUNCIL MTG OF: August 15, 2023  
FROM: David Caron, Town Administrator  
OFFERED BY: Administration  
PREPARED BY: Administration  
SUBJECT: Consider adopting an Ordinance to provide for the regulation of Massages, Saunas and Other Types of Baths

---

### PURPOSE

Schedule a public hearing and subsequently approve an Ordinance that provides for the regulation of Massages, Saunas and Other Types of Baths

---

### TOWN ADMINISTRATOR COMMENTS

Please see comments within this staff report.

### BACKGROUND

The Town has seen a number of massage establishments located in Derry. Although the State has established regulations governing some of these activities, they are largely ineffective due to limited staff and statute construct.

Several cities and larger towns throughout the State have enacted local regulations to ensure that these entities are operating in a safe and sanitary manner. Due to the type of human interaction required during massages, it is incumbent upon the municipality to ensure that public safety is maintained.

Town Counsel is finalizing the proposed ordinance, which will be available prior to Tuesday's meeting for the Consent Agenda, followed by a public hearing on September 5. We've attached the ordinance for the Town of Salem which we are using as a baseline to construct Derry's ordinance.

### DISCUSSION

Recent attempts to strengthen and expand the regulation of these establishments in the State Legislature have not been met with success during the last two legislative sessions. It would be preferable from a public policy perspective to implement comprehensive state-wide regulations, however we believe that a local ordinance would allow for the protection of health and safety when citizens avail themselves of these services in Derry.

**FISCAL IMPACT:** As Derry maintains the full-time position of Health Officer, there would be no fiscal impact resulting from the adoption of this regulation.

### RECOMMENDED MOTION

Please see Ordinance #2023-006



ORDINANCE  
Number 2023-006

Adopt Chapter 56 – Regulating Massages, Saunas and  
Other Types of Baths

---

WHEREAS, Section 5.1 of the Town Charter designates the Town Council as the governing and legislative body of the Town, and pursuant to Section 6.1, the Council shall legislate by ordinance; and

WHEREAS, the Town has seen the need for regulations to protect the health and safety of the community; and

WHEREAS, resources from the State of New Hampshire are limited requiring local involvement; and

WHEREAS, the adoption of Chapter 56 will enact certain requirements and standards to safeguard the citizens of Derry;

NOW, THEREFORE, THE TOWN OF DERRY ORDAINS Chapter 56 of the General Code, Regulating Massages, Saunas and Other Types of Baths is hereby adopted as attached.

This Ordinance shall take effect 30 days after its adoption.

Adopted: September 5, 2023

Attest:

X \_\_\_\_\_

Charles Foote, Council Chair

Date: \_\_\_\_\_

X \_\_\_\_\_

Cristina Guilford, Town Clerk

Date: \_\_\_\_\_

## Chapter 56. Massages, Saunas, Other Types of Baths and Asian Spas

Type in table of contents in bold as per other sections of the Code

### **§ 56-1 Purpose and Statutory authority.**

The purpose of this chapter is to regulate the establishments where licensed professionals licensed pursuant to RSA 328-B and RSA 328-H. The section of the Derry Code, adopted pursuant to RSA 147:1, is also for the purpose of preserving the health, morals and general welfare of the Town of Derry and particularly to prevent an influx of patrons at massage establishments which would be detrimental to the public health, property values, commerce, reputation, atmosphere and land use planning goals of the Town of Derry.

### **§ 56-2 Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

#### **Applicant**

A person who has submitted to the Derry Health Department an application for license pursuant to this chapter.

#### **Athletic Trainer**

An allied health professional who has successfully completed and met the athletic training curriculum requirements of an approved college or university and is able to provide proof of graduation. The athletic trainer carries out the practice of prevention, physical rehabilitation, or both, of injuries incurred by participating athletes at his educational institution, professional athletic organization, or other bona fide athletic organization. The athletic trainer shall meet any present or future qualification requirements established by the Town of Derry and State of New Hampshire.

#### **Compensation**

The receipt of:

- A. Money, goods, services, or other things of value; or
- B. A promise to deliver money, goods, services, or other things of value.

#### **Licensee**

A person to whom a license has been issued pursuant to this chapter and pursuant to RSA 328-B and RSA 328-H; and specifically includes those individuals who practice the application of a system of structured touch therapies which includes reflexology, structural integration, or Asian bodywork therapy as regulated pursuant to RSA 328-H.

#### **Massage**

To instill a system of activity in the muscular structure of the human body by applying, to the human body, pressure, friction, rolling, stroking, tapping, kneading, cupping, petrissage, rubbing, effleurage, tapotement, or vibration, by manual or mechanical means, and with or without appliances or external baths, for any purpose, including but not limited to improving muscle tone and circulation, body contouring, or maintaining good health or physical condition. The term includes but is not limited to oil rubs, salt glows, hot or cold packs, steam baths, cabinet baths, sauna baths, and sitz baths. The term shall not include colon irrigation.

## Chapter 56.

# Massages, Saunas, Other Types of Baths and Asian Spas

### **Massage Establishment**

A place licensed by the Derry Health Department under this chapter and RSA 328-B and RSA 328-H where massage is performed for compensation. A massage practitioner may visit a client's private residence for the purpose of conducting a massage so long as no more than one client is serviced during the visit at any one time.

### **Massage Practitioner**

A licensed individual who performs massage for compensation in a licensed massage establishment or a client's residence as provided in this chapter and RSA 328-B and RSA 328-H and who has certified proof of completion of massage training in a recognized school. This specifically includes those who practice reflexology, structural integration, or Asian bodywork therapy.

### **Masseur and Masseur**

A person who massages or teaches other persons how to massage, or perform reflexology, structural integration, or Asian bodywork therapy and must meet all the requirements of this chapter and RSA 328-B and RSA 328-H.

### **Recognized School**

Any school or institution of learning which has for its purpose the teaching of the theory and practice, the method or work of massage, including anatomy, physiology, hygiene, and professional ethics, and which is either licensed by the agency designated in RSA 21-N:8-a or certified by the American Massage Therapy Association.

### **§ 56-3 Exceptions.**

A. This chapter shall not be construed so as to require a person who is licensed by the State of New Hampshire pursuant to any Revised Statutes Annotated other than RSA 328-B and RSA 328-H, or any person employed by such a licensee to assist that licensee in the performance or pursuit of the occupation so licensed, to obtain a license pursuant to this chapter to do any act authorized to such a licensee, or such licensee's assistant, by those other chapters, or to subject such licensees to regulations under this chapter by reason of the doing of any such act.

B. This chapter shall not apply to athletic trainers as defined in this chapter, to the extent that they are performing bona fide training services for an athletic team located or training within the Town of Derry, including any public or private school.

C. This chapter shall not apply to bona fide schools, hospitals, nursing homes, convalescent homes and other similar institutions and employees thereof.

### **§ 56-4 License required for establishment.**

No firm, corporation, limited liability company, partnership or person shall maintain an establishment for the giving of massages or vapor, pool, shower or other baths for compensation or advertise or hold the establishment out as being engaged in the business of massage or giving of such baths without meeting all the licensing provisions of this chapter and of RSA 328-B and RSA 328-H and any subsequent changes made to any of these chapters and regulations.

### **§ 56-5 Application procedure; information required.**

The license application shall be made to the Derry Health Department on an application furnished by the Department. The application shall set forth the following information and such other information as the Department deems necessary in order to maintain the public health:

## Chapter 56. Massages, Saunas, Other Types of Baths and Asian Spas

- A. The number of persons employed by the owner at the establishment.
- B. The names, addresses and telephone numbers of the manager of the establishment and persons giving massages or baths.
- C. Such evidence of training and/or experience on the part of the owner or manager in giving massages or baths as the Derry Health Department deems necessary. Proof of a current, valid individual license issued by the State of New Hampshire Office of Professional Licensure and Certification pursuant to RSA 328-B (“individual NH license”) for every individual working as a massage therapist practitioner at the establishment. No license shall be granted to any establishment without an individual NH licensed massage practitioner on site to administer such massage therapy. Every establishment owner is responsible for providing an updated individual NH license when a new employee is hired that requires an individual NH license or when a current employee’s individual NH license expires.
- D. The names, dates of birth, and addresses of all corporate stockholders, officers, and directors, if the applicant is a corporation, and the names, ages and addresses of members if the applicant is a Limited Liability Company, or names, ages and addresses of the applicant if not an LLC or corporation. If the corporation or LLC is a foreign entity, then it must register to do business in the State of New Hampshire through the New Hampshire Secretary of State’s Corporate Division. If changes in the above occur prior to the expiration of the license, such changes, together with the requisite information, shall be reported in written form to the Board of Health within 14 days. If ownership of 50% or more of the application is transferred, the license will terminate at such time.
- E. Other information as requested on the application form.

### § 56-6 Conditions of license.

- A. Each license shall be in effect April 1 to March 31. Applicants will be notified of renewal within 30 days prior to due date.
- B. No license will be issued to an applicant if the applicant or, where the applicant is a corporation, if any of the directors or officers of the corporation or, if the applicant is a partnership or other business entity, if any of the principals or officers of the applicant have been convicted in this or any other state of a felony, or a sexually related crime, or a crime involving moral turpitude within 10 years immediately preceding the date of application, the record of which has not been annulled by a court.
- C. No license is transferable.
- D. The license must be displayed in a conspicuous location on the premises.
- E. No firm, corporation, limited liability company, partnership or person shall operate under any name or conduct business under any designation except that specified in the license.
- F. A licensee must notify the Derry Health Department prior to any change of address.
- G. The annual establishment license fee shall be as provided in § 56-11.

## Chapter 56. Massages, Saunas, Other Types of Baths and Asian Spas

### § 56-7 Required facilities and equipment; restrictions on operation.

Any firm, corporation, limited liability company, partnership, or person maintaining an establishment for giving massages or vapor, pool, shower or other baths for compensation must maintain and operate such establishment as follows:

- A.** The total massage establishment, including appliances and apparatus, shall be maintained in a clean and sanitary condition at all times.
- B.** All employees and massage practitioners shall be modestly attired.
- C.** Individual clean sheets and towels shall be provided for each patron to lie on during massage, and the patron's body shall be covered appropriately except for the portion being subject to massage.
- D.** Single-service disposal items shall be utilized if washable sheets and towels are not used.
- E.** 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.
- F.** Massage as defined in this chapter and in RSA 328-B and RSA 328-B:1 shall be performed in a private one-room cubicle, booth or area within the establishment.
- G.** No alcoholic beverage or drugs shall be displayed, served, ingested, or sold on the premises of a massage establishment. No food shall be sold on the premises.
- H.** A supply of hot and cold running water shall be available at all times during hours of operation. The waste disposal system shall be in compliance with Chapter 122 Sewers of this Code and all applicable New Hampshire Department of Environmental Services regulations.
- I.** Massage practitioners shall thoroughly cleanse their hands by washing them immediately before and after each massage.
- J.** Mechanical apparatus, such as heat lamps, hot and cold packs, tubs, special showers, cabinet baths, steam or dry heat baths, shall be utilized only by and under the constant, direct personal supervision of a licensed massage practitioner.
- K.** All equipment and materials utilized by massage practitioners shall be in safe and sanitary condition and maintained and operated to eliminate any danger or hazard to patron or practitioner.
- L.** No part of a percussor, vibrator, or other device (mechanical or otherwise) which cannot be sterilized or sanitized shall be applied directly to the skin of the patron, and the part of the body administered to shall be covered with a clean towel or napkin or else the device shall be covered in a similar manner.
- M.** Each massage establishment shall maintain a daily register identifying all patrons, hours of arrival, and the massage practitioner rendering services. The register shall be available at all times during business hours and subject to inspection by the Derry Health Officer, or Police Chief or their duly appointed agents and shall be kept on file for a minimum of one year.

## Chapter 56.

### Massages, Saunas, Other Types of Baths and Asian Spas

N. Adverse reactions and accidents shall be recorded in the daily register and the Derry Health Department shall be notified.

O. No patron who may be suspected of possibly having an infectious or contagious or communicable disease particularly of the body surfaces shall be provided with any service unless such patron shall have furnished a certificate from a licensed physician that the disease is not of transmissible nature.

P. Massage practitioners shall not diagnose or treat classified diseases, practice spinal manipulation, or prescribe medications of any kind.

Q. Colon irrigation and/or hydrotherapy shall be prohibited.

R. Temperatures of water baths, of any type, shall not exceed 105° F., and patrons shall not be subjected to exposures of more than 30 minutes at any one treatment period.

S. Dry heat cabinet shall not exceed 185° F., and patrons shall not be subjected to exposures of more than 30 minutes at any one treatment period.

T. Steam cabinet temperature shall not exceed 110° F., and patrons shall not be subjected to exposures of more than 30 minutes' duration at any one treatment period.

U. Each treatment room shall be properly lighted so that visual observation of the room is permitted, well ventilated and properly heated. At least one artificial light of not less than 580 lumens shall be lighted in each room at all times that the establishment is open.

V. Toilet and washing facilities shall be readily available to patrons and afford sufficient privacy. Male and female facilities shall be separate.

W. The building in which the establishment is located must meet all requirements of local, state, and federal laws, ordinances and regulations.

X. No establishment shall operate earlier than 9:00 a.m. or later than 11:00 p.m.

Y. All main entrance doors and doors to all treatment rooms shall remain unlocked during normal business hours.

#### **§ 56-8 Proof of individual state license required.**

No person shall practice massage or give baths in an establishment for giving massages or vapor, pool, shower or other baths unless such person has proof of a current, valid individual New Hampshire license. Establishments, and their employees, are responsible for providing updated individual New Hampshire licenses when a new employee is hired that requires an individual New Hampshire license or when a current employee's individual New Hampshire license expires.

#### **§ 56-9 Inspections.**

The Derry Health Department or its agents may inspect an establishment at any time that the establishment is open for business or at any other reasonable time without prior notification to the establishment.

## Chapter 56. Massages, Saunas, Other Types of Baths and Asian Spas

### **§ 56-10 Rescission or suspension of license.**

The Derry Health Department or its duly appointed agent may suspend or rescind any license granted hereunder for violation of any provision of this chapter or for any other good cause. Any firm, corporation, limited liability company, partnership or person whose license has been suspended or revoked may request, in writing, a hearing within 10 days of such suspension or rescission. In such event, the Town Council shall schedule a hearing which, if the licensee requests, shall be held not later than three days after receipt of the request in writing for such hearing.

### **§ 56-11 License fees.**

License fees, as adopted by the Town Council, are on file with the Derry Health Department and on the Town of Derry website.

### **§ 56-12 Violations and penalties.**

The Derry Health Department may seek whatever legal redress it deems appropriate in the courts of the State of New Hampshire in the enforcement of this chapter. Whoever violates any provision of this chapter shall be subject to fines and fees equal to the maximum penalty allowed pursuant to RSA 147, for each offense, to inure to the general fund of the Town of Derry, and in addition may be enjoined from violating the provisions of this chapter. Each day on which a violation of this chapter exists shall be considered a separate offense.

### **§ 56-13 Exceptions.**

This article shall not apply to:

A. Physicians, physical therapists, chiropodists, podiatrists and chiropractors, if registered or licensed under the statutes of the State of New Hampshire.

B. Barbers, hairdressers, beauticians and apprentices, operators and students in such occupations, if registered or licensed under the statutes of the State of New Hampshire, insofar as such persons perform facial or scalp massages.

C. Bona fide schools, hospitals, nursing homes, convalescent homes and other similar institutions, and employees thereof.

### **§ 56-14 Prohibited acts.**

No firm, corporation, limited liability company, partnership, or person shall maintain or conduct an establishment for the giving of massages for hire or reward or advertise or hold the establishment out as being engaged in the business of massage in the Town of Derry without satisfying the provisions of this Chapter.

### **§ 56-15 Effect on other regulations.**

This chapter shall not be construed as repealing any other ordinance, code, bylaw or regulation of the Town of Derry. In the event that any section, paragraph, sentence, clause or phrase of this chapter shall be deemed invalid, either in general or as applied to a particular case, all other ordinances, bylaws or regulations of the Town of Derry, including the remaining provisions of this chapter, and particularly the Derry Health Department regulations for the operation of massage parlors, shall be applicable and shall be enforced.



Chapter 56.  
Massages, Saunas, Other Types of Baths and Asian Spas

Revisions approved and adopted by the Derry Town Council on \_\_\_\_\_.