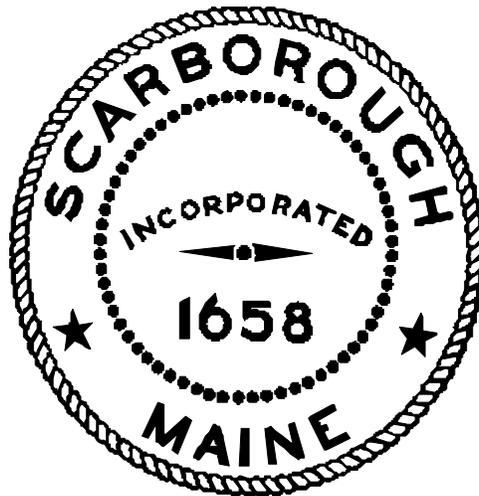


CHAPTER 1010

TOWN OF SCARBOROUGH

MASSAGE ESTABLISHMENT

ORDINANCE



ADOPTED JUNE 5, 1991
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**CHAPTER 1010
TOWN OF SCARBOROUGH, MAINE
MESSAGE ESTABLISHMENT ORDINANCE**

ARTICLE I - GENERAL PROVISIONS

Section 1. Purpose.

The purpose of this Ordinance is to regulate the operation of massage establishments in order to promote the public health, safety and general welfare.

Section 2. Definitions.

For the purpose of this Ordinance, the following shall apply unless the context clearly implies otherwise:

DISQUALIFYING CRIMINAL CONVICTION:

Any conviction for any criminal offense punishable by imprisonment for any period of time, whether or not the sentence was imposed or served, but not including any conviction which is shown to have been set aside on appeal or collaterally, or for which a pardon, certificate of rehabilitation, or the equivalent under the law of the sentencing jurisdiction has been granted, or which is not rationally related to the purpose of licensing massage establishments.

MASSAGE:

Massage therapy as defined in Section 14301(3) of Chapter 125 of Title 32 of the Maine Revised Statutes. (11/18/92)

MASSAGE ESTABLISHMENT:

Any business, including but not limited to sole proprietorship, in which the business operation consists of providing or making available massage in the Town of Scarborough for consideration or with the expectation of receiving consideration or any gratuity, whether or not the business has a fixed place of business within the limits of the Town.

MASSAGE THERAPIST:

Any person who performs massage for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

PATRON:

Any person who receives a massage.

PERSON:

Any individual, partnership, corporation or other entity.

RECOGNIZED SCHOOL:

Any school or institution of learning which has for its purpose the teaching of the theory, method, profession and work of massage and is recognized or certified by the State of Maine or any other state. Schools offering a correspondence course not requiring actual attendance of class, shall not be deemed a Recognized School.

Section 3. Exemptions.

The following shall be exempt from this Ordinance, if duly licensed by and while practicing in accordance with the laws of this State: Physicians and Surgeons (medical doctors and doctors of osteopathy) Physicians' Assistants, Nurses, Chiropractors, Physical Therapists, Barbers, Cosmetologists, Beauticians, and other health and hygiene professionals.

Section 4. Massage Tables.

All massages shall be administered on a massage table, treatment table or treatment mat.

Section 5. Maintenance and Cleaning.

Every person who conducts or operates a massage establishment shall keep the same at all times in a clean and sanitary condition. All instruments, supplies and devices of any kind, or parts thereof, that come into contact with the human body shall be kept clean by a modern and approved method of cleaning.

Section 6. Prohibited Activities.

- A. No massage therapist shall administer a massage to a patron whose genitals are exposed.
- B. No massage therapist shall administer or agree to administer a massage to the genitals or anus of a patron.
- C. No massage therapist shall administer a massage unless he or she is fully clothed with non-transparent clothing of the type customarily worn by massage therapists while administering a massage.

Section 7. Closing Hours.

No massage establishments shall be kept open for massage purposes between the hours of 12 midnight and 6:00 a.m.

Section 8. Supervision.

At all times when open for business, a massage establishment shall have upon the premises a licensed massage therapist or person who possesses a combination massage establishment/massage therapist license who shall be available to supervise the operation of the establishment and assure that no violations of this Ordinance occur.

Section 9. List of Employees.

A massage establishment shall keep a written list of the names and current addresses of all employees, both on duty and off duty. Such list shall be shown to the chief of police, the chief's authorized deputy, the town clerk or the clerk's representative, upon request.

ARTICLE II. LICENSES

Section 1. Required.

A. Massage Establishment License.

No person shall operate a massage establishment without a valid massage establishment license. A separate license shall be required for each such establishment.

B. Massage Therapist License.

No person shall work as a massage therapist without a valid massage therapist license or a combined massage establishment/massage therapist license.

C. Combined Massage Establishment/Massage Therapist License.

A sole practitioner who employs no massage therapist other than himself/herself may apply for a combined massage establishment/massage therapist license in lieu of both a massage establishment license and a massage therapist license.

D. Conditional Massage Therapist License.

For the purpose of allowing an applicant for a license pursuant to Article II.1.B. or II.1.C who is otherwise qualified to obtain such a license, except for compliance with Article II.6, to comply with Article II.6, a conditional massage therapist license may be issued under the following conditions:

1. All provisions of Article II shall apply to a licensee under this section, except Section 6.
2. Licensee under this section shall designate one massage therapist or combined massage establishment/massage therapist licensed by the Town of Scarborough as the supervisor for licensee.
3. Licensee under this section may designate no more than one licensed supervisor pursuant to Article II.1.D.2 unless said licensed supervisor shall voluntarily surrender his/her license.
4. The designated licensed supervisor may supervise two (2) or fewer conditional massage therapists per license year.
5. Licenses issued pursuant to this subsection D may not be renewed.

Section 2. Licenses Displayed.

A valid massage establishment license shall be displayed at all times in an open and conspicuous place in the massage establishment for which it was issued. A valid conditional massage therapist license, massage therapist license or combined massage establishment/massage therapist license must be readily available to be produced immediately if demanded of the licensee.

Section 3. Standards for Denial.

A license application under this Ordinance shall be denied to any of the following persons:

A. Massage Establishment License.

1. a corporation not registered to do business in this state;
2. a corporation if any principal officer thereof or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction within the immediately preceding five (5) years; or
3. an applicant other than a corporation if such applicant or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction, within the immediately preceding five (5) years.

B. Massage Therapist, Combined Massage Establishment/Massage Therapist, or Conditional Massage Therapist.

1. to an applicant who has a disqualifying criminal conviction at any time during the five (5) years immediately preceding application; or
2. to an applicant who is not at least eighteen (18) years of age.

The clerk shall make and keep a written record of every decision to deny an application for any license hereunder.

Section 4. Grounds for Suspension or Revocation.

A. All Licenses.

Any license may be suspended or revoked upon a determination that the licensee:

1. failed to notify the clerk of any change in material facts set forth in the application for such license; or
2. violated any provision of this Ordinance of the License Ordinance.

B. Massage Establishment or Combined Establishment/Therapist license.

In addition to the provisions of subsection (A), either a massage establishment license or combined massage establishment/massage therapist license may be suspended or revoked upon a determination that the licensee:

1. permitted any person to perform massage without a valid license to do so;

2. permitted or allowed an employee, massage therapist or conditional massage therapist to violate any provision of this Ordinance on the premises of the establishment or in the course of conduct of the business of the establishment; or
3. knowingly permitted any violation of Title 17-A M.R.S.A. sections 851 through 855. Such knowledge shall be presumed if there have been two (2) or more convictions for any such offense within any one-year period. The applicant or licensee may rebut said presumption by showing that (i) due diligence was exercised to prevent the recurrence of any such offense and (ii) despite such diligence, he or she did not know and could not reasonably have known of any subsequent offense.

Section 5. Application for Massage Establishment, Combined Massage Establishment/Massage Therapist and Massage Therapist Licenses.

Any person desiring a license pursuant to this Ordinance shall file a written, signed application with the town clerk on a form to be furnished by the clerk. An application for a combined massage establishment/massage therapist license, a massage therapist license or a conditional massage therapist license shall be accompanied by a signed photograph of the applicant taken within thirty (30) days of the application, of such sizes as the clerk may specify. [amended 02/16/2005]

Section 6. Basic Proficiency.

Each applicant for a massage therapist license or combined massage establishment/massage therapist license shall show proof of basic proficiency in the field of massage therapy which may be satisfied by:

- A. evidence of completion of a formal training course in massage therapy given by a recognized school;
- B. evidence of one hundred (100) hours of on-the-job training in massage performed in the presence of a person holding a valid massage therapist license or a combined massage establishment/massage therapist license issued by the Town of Scarborough;
- C. evidence of continuous practice as a massage therapist for at least one (1) year, accompanied by the written recommendation of at least five (5) persons holding a valid massage therapy license or a combined massage establishment/massage license issued by the Town of Scarborough, which shall state that said person has personally received a massage from the applicant that was administered in a skilled and professional manner; or
- D. evidence of successful completion of a certifying exam given by another municipality or state, or the certifying exam given by American Massage Therapy Association.

Section 7. Obtaining License by Fraud.

- A. No person shall make any false, untruthful or fraudulent statement, either written or oral, or in any way conceal any material fact, or give or use any fictitious name in order to secure or aid in securing a license required by this Ordinance. All names, including

but not limited to maiden name, ever used by the applicant must be noted on the application.

B. Any license so secured shall be void.

Section 8. Use of License.

No person shall make use of, in any manner, to his or her own or another's benefit, any license which has not been duly issued to him or her in accordance with this Ordinance.

Section 9. Compliance of Existing Therapists and Massage Establishments.

A. Any person presently operating as a massage therapist and/or operating a massage establishment in Scarborough as defined herein on the effective date of this Ordinance shall comply with the terms of this Ordinance by obtaining a license hereunder within three (3) months of the effective date of this Ordinance.

Section 10. Severability.

In the event that any section, or any portion of this Ordinance shall be declared by any competent court to be invalid for any reason, such declaration shall not be deemed to affect the validity of any other section, subsection or portion of this Ordinance.

Section 11. Penalty.

The violation of any provision of this Ordinance shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the town may enjoin or abate any violation of this Ordinance by appropriate action.

Section 12. Term of License.

Licenses issued pursuant to this Ordinance shall be for a term of no more than one year and shall expire annually on September 30th.

Section 13. Application Fees.

The fees for licenses issued under this Ordinance shall be as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.

The fees are payable at the time of application and are non-refundable.

Section 14. New Licenses and Renewals. [amended 02/16/2005]

A. New Licenses.

A new license under this ordinance may be issued only by the Town Council after public hearing, notice of which shall be given at least seven days in advance by publication in a newspaper having circulation in the Town and by posting notice in a public place

B. Renewal Licenses.

An existing license may be renewed by the Town Clerk, provided that the holder of the existing license makes application for renewal on or before September 30th. If the holder applies for renewal on or before September 30th, the existing license shall remain in effect until final action on the renewal application. Otherwise, the existing license shall expire on September 30th and an application for a new license must be filed. For renewal applications filed on or before September 30th, the Clerk shall process and issue renewal licenses in the same manner as the Town Council processes and issues new licenses, except that no public hearing and no criminal background check is required for a renewal. The Clerk may renew a license only if the Clerk is satisfied that the application meets all the requirements of this ordinance. If the Clerk is not satisfied that the application meets all the requirements of this ordinance, the Clerk shall refer the application to the Town Council, which shall process the application in the same manner as an application for a new license.

C. Criminal Background Checks.

The Town Council shall not take final action on an application for a new license (including an application for a renewal license filed after September 30th) until the Town Clerk has received and reviewed a criminal background check from the State Bureau of Investigation on the applicant and any persons having a relationship to the applicant described in Section 3 of this Ordinance.