

MESSAGE ESTABLISHMENT AND MESSAGE THERAPIST REGULATORY ORDINANCE

Adopted: September 3, 1991
Amended: April 1, 2008
Amended: April 7, 2009

**TOWN OF GORHAM
MESSAGE ESTABLISHMENT ORDINANCE**

Section 1. General Provisions.

1.1 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.

1.2 Severability.

In the event that any section or portion of this Ordinance shall be declared by any competent court to be invalid for any reason, such declaration shall be deemed to affect the validity of any other section, subsection or portion of this Ordinance.

Section 2. Definitions.

2.1 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 for which a pardon, certificate of rehabilitation, or the equivalent under the laws of sentencing jurisdiction has been granted, or which is not rationally related to the purpose of licensing massage establishments.

2.2 Massage.

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

2.3 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 Gorham 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.

2.4 Massage Therapist.

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

2.5 Patron.

Any person who receives a massage.

2.6 Person.

Any individual, partnership, corporation, or other entity.

2.7 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.

- 3.1 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.

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

Section 5. Maintenance and Cleaning.

- 5.1 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.

- 6.1 No massage therapist shall administer a massage to a patron whose genitals are exposed.
- 6.2 No massage therapist shall administer or agree to administer a massage to the genitals or anus of a patron.
- 6.3 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.

- 7.1 No massage establishments shall be kept open for massage purposes between the hours of 10 p.m. and 6 a.m., provided that any massage begun before 10 p.m. may be completed.

Section 8. Supervision.

- 8.1 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.

- 9.1 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.

Section 10. License Required.

- 10.1 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.

- 10.2 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.

- 10.3 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.

- 10.4 Conditional Massage Therapist License.

For the purpose of allowing an applicant for a license pursuant to Section 10.2 or Section 10.3 who is otherwise qualified to obtain such a license, except for compliance with Section 15, to comply with Section 15, a conditional massage therapist license may be issued under the following conditions:

- A. All provisions of Section 10 shall apply to a licensee under this section, except Section 15.
- B. Licensee under this section shall designate one massage therapist or combined massage establishment/massage therapist licensed by the Town of Gorham as the supervisor for licensee.

- C. Licensee under this section may designate no more than one licensed supervisor pursuant to Section 10.4 unless said licensed supervisor shall voluntarily surrender his/her license.
- D. The designated licensed supervisor may supervise two (2) or fewer conditional massage therapists per license year.
- E. Licenses issued pursuant to Section 10.4 may not be renewed.

Section 11. Licenses Displayed.

- 11.1 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 12. Standards for Denial.

- 12.1 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 states;
 - 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.
- 12.2 The Clerk shall make and keep a written record of every decision to deny an Application for any license hereunder.

Section 13. Grounds for Suspension or Revocation.

- 13.1 Any license may be suspended or revoked upon a determination that the licensee:
- A. failed to notify the clerk of any change in material facts set forth in the Application for such license; or
 - B. violated any provision of this Ordinance.
- 13.2 In addition to the provisions of subsection 13.1, either a massage establishment license or combined massage establishment/massage therapist license may be suspended or revoked upon a determination that the licensee:
- A. permitted any person to perform massage without a valid license to do so;
 - B. 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
 - C. 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 14. Application for Massage Establishment, Combined Massage Establishment/Massage Therapist and Massage Therapist Licenses.

- 14.1 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 Town 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.

Section 15. Basic Proficiency.

- 15.1 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 Gorham.

- 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 Gorham, 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 16. Obtaining License by Fraud.

- 16.1 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.
- 16.2 Any license so secured shall be void.

Section 17. Use of License.

- 17.1 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 18. Compliance of Existing Therapists and Massage Establishments.

- 18.1 Any person presently operating as a massage therapist and/or operating a massage establishment in Gorham as defined herein on the effective date of this Ordinance shall comply with the terms of this Ordinance upon renewal of their existing license.

Section 19. Application Process for New Licenses and Renewals.

- 19.1 A new license under this ordinance may be issued by the Town Clerk only if the Town Clerk is satisfied that the application meets all of the requirements of this ordinance. If the Town Clerk denies an application, the Clerk shall issue a written decision stating the reason for not granting the license.
- 19.2 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 December 31. If the holder applies for renewal on or before December 31, the existing license shall remain in effect until final action on the renewal application. Otherwise, the existing license shall expire on December 31 and an application for a new license must be filed. The Clerk may renew a license only if the Clerk is satisfied that the application meets all the requirements of this ordinance.

- 19.3 Applicants who are denied a license by the Town Clerk may appeal the Clerk's decision within thirty (30) days to the Town Council. The Town Council, after public hearing , notice of which shall be given at least seven (7) days in advance by publication in a newspaper having a circulation in the Town, shall issue a decision on the appeal.
- 9.4 The Town Council shall not take final action on an application it has received, pursuant to Section 19.3, for a new license (including an application for a renewal license filed after December 31) 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.

Section 20. Term of License.

- 20.1 Licenses issued pursuant to this Ordinance shall be for a term of no more than one year and shall expire annually on December 31.

Section 21. Application Fees.

- 21.1 The fees for licenses issued under this Ordinance shall be established by the Town Council. Applicants should contact the Town Clerk for the current fee.
- 21.2 The fees are payable at the time of application and are non-refundable.

Section 22. Penalty.

- 22.1 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.

3/19/09