

CHAPTER 218
MESSAGE ESTABLISHMENT AND MESSAGE THERAPIST
REGULATORY ORDINANCE
TOWN OF GRAY MAINE

Adopted April 1, 1997

SECTION 218.1 – TITLE

This Chapter shall be known as the “Town of Gray Massage Establishment and Massage Therapist Regulatory Ordinance” and may be referred to by short title as the “Massage Ordinance” or the “Ordinance”.

SECTION 218.2 – PURPOSE

The Town of Gray recognizes that the practice of legitimate massage therapy by trained and experienced therapists is a valuable component of our health care system. The Town of Gray also recognizes that persons without legitimate massage training or experience may masquerade as massage therapists as a façade for unlawful purposes such as prostitution. It is the purpose of this Ordinance to clearly distinguish between these persons and to promote the public health, safety and general welfare by simultaneously acknowledging and permitting legitimate massage therapy and prohibiting the commission of sexual intercourse, sexual contacts or sexual acts for money.

SECTION 218.3 – DEFINITIONS

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

- A. “Client” means any person who receives a therapeutic massage.
- B. “Massage” or “therapeutic massage” are used interchangeably to mean any method of rubbing, kneading, tapping, vibration, compression, percussion, application of friction or manipulation of the external parts of the human body other than parts of the body above the neck, with the hands or other parts of the body or with the aid of any instrument or device.
- C. “Massage establishment” or “therapeutic massage establishment” are used interchangeably to mean any business including but not limited to a sole proprietorship in which the business operations consist of providing or making available massage in the Town of Gray 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 Town limits.
- D. “Massage therapist/practitioner means any person who performs massage therapy, as defined by State statute, for consideration or gratuity or with the expectation of receiving consideration or any gratuity. 2
- E. “Person” means an individual, partnership corporation or other entity.
- F. “Recognized school” means any school or institution of learning approved or accredited by the American Massage Therapy Association/Commission on Massage Training Accreditation.

Approved [AMTA/COMTAA], or equivalent to or surpassing an AMTA/COMTAA approved school or the American Body Works and Massage Professional Association, which offers a course of training in the theory, method, profession and work of massage therapy consisting of five hundred (500) hours or more, the completion of which renders a student eligible for membership in the AMTA. Schools which cannot be verified shall not be deemed a recognized school. The burden of

proving that a school meets or surpasses the education and training requirements of an AMTA/COMTAA approved school shall be on the applicant.

SECTION 218.4 – EXEMPTIONS

The following persons shall be exempt from this Ordinance while licensed and practicing in accordance with the laws of this State: Physicians, physicians' assistants, surgeons, osteopaths, nurses, chiropractors, physical therapists, members of the AMTA, or those persons with no less than two hundred (200) hours of training from a recognized school as defined above, barbers, cosmetologists, beauticians and other health and hygiene professionals. Students enrolled in a recognized school who are required to give massage as part of their training shall be exempt from this Ordinance only for such training.

SECTION 218.5 – LICENSE REQUIRED

- A. Therapeutic massage establishment license. No person shall operate a therapeutic massage establishment without a valid therapeutic massage establishment license issued by the Town. 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/therapist license issued by the Town.
- C. Combined massage establishment/massage therapist license. A sole who employs no massage therapist other than himself may apply for a massage establishment/massage therapist license in lieu of both a therapeutic massage establishment license and a massage therapist license.

SECTION 218.6 – COMPLIANCE OF EXISTING THERAPISTS AND MASSAGE ESTABLISHMENTS

Any person presently operating as a massage therapist and/or operating a massage establishment in the Town as defined herein on the effective date of this Ordinance shall comply with the terms of this Ordinance by obtaining a license hereunder within one (1) month of the effective date of this Ordinance.

SECTION 218.7 – LICENSE FEE EXPIRATION

Each applicant, within thirty (30) days of approval of the application and before issuance of the license, shall pay an annual fee of Five Hundred dollars (\$500.00) if the fee is not paid within said thirty (30) days, the approval of the application shall expire. Any license issued pursuant to this Ordinance shall expire one (1) year from date of issuance, unless otherwise suspended or revoked.

SECTION 218.8 – APPLICATIONS AND INFORMATION

- A. Each applicant for a license shall:
 - 1. Complete all information upon and file an application on a form prescribed by the Town Clerk;
 - 2. Pay a nonrefundable application fee of five hundred (\$500.00) in advance to the Town Clerk;
 - 3. Submit the completed application to the Town Clerk, together with attested copies of the articles of incorporation and bylaws, if the applicant is a corporation; evidence of partnership, if a partnership; or articles of association and bylaws, if the applicant is an association, as well as a list of all officers and directors for each of the entities described herein;
 - 4. File an affidavit which will identify all owners, officers, managers or partners of the applicant and their places of residence at the time of the application and for the immediately preceding five (5) years;

5. For a combined massage establishment/massage therapist license or a massage therapist license, submit two (2) front face photographs of the applicant taken within thirty (30) days of application, of such size as the Clerk may specify; and
6. File the release authorized by 16 M.R.S.A., Section 620 (6) –Criminal History Record Information Act, with the application for each applicant and for each officer, owner, manager or partner of an applicant seeking a therapeutic massage establishment or combined massage establishment/massage establishment license.

SECTION 218.9 – QUALIFICATIONS OF APPLICANT, OFFICERS

Within the five (5) years immediately preceding the date of application, no applicant nor, for a massage establishment or combined massage establishment /massage therapist license, any owner, officer, manager or partner of an applicant shall have been convicted of a crime now classified under Maine Statute as a Class A, B, or C crime, a crime involving moral turpitude, the crimes of engaging in prostitution or promotion of prostitution, or of violating any of the gambling, drug or prohibitive liquor laws under the laws of the United States or the State of Maine or any other state. Hereinafter any one of the foregoing convictions or violations may be referred to as a “disqualifying criminal conviction”.

SECTION 218.10 – INVESTIGATION OF APPLICANT, OFFICERS

Upon receipt of an application or notice of a change of the owners, officers, manager or partners of the applicant;

- A. The building inspector shall verify that the premises at which the establishment will be located comply with all applicable ordinances of the Town including, but not limited to, the building code, electrical code, plumbing code and zoning ordinance, and shall report these findings in writing to the Town Clerk;
- B. The Town Clerk shall review the application and other documents and determine whether such documents comply with all of the requirements of this Ordinance;
- C. The health officer shall inspect the location or proposed location to determine whether the applicable ordinances relating to health and safety have been satisfied and shall report these findings in writing to the Town Clerk;
- D. The fire chief or designee shall inspect the location or proposed location to determine if all Town ordinances concerning fire and safety have been satisfied and shall submit these findings in writing to the Town Clerk; and
- E. The police chief or designee shall investigate the application, including the criminal history record information authorized under Section VIII herein and shall report these findings in writing to the Town Clerk.
- F. All reports under this section shall be filed with the Town Clerk.

SECTION 218.11 – BASIC PROFICIENCY

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

- A. Evidence of the satisfactory completion of all formal course work and training in massage therapy required for graduation from a recognized school, which shall be in the equivalent documentation; or

- B. A written statement from a physician, nurse, osteopath, chiropractor, physical therapist or member of the AMTA stating that the person refers clients to the applicant for therapeutic massage.

SECTION 218.12 – OBTAINING LICENSE BY FRAUD

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. Any license so secured shall be void. All names, including but not limited to maiden name, ever used by the applicant must be noted on the application.

SECTION 218.13 – USE OF LICENSE

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

SECTION 218.14 – STANDARDS FOR DENIAL

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

A. Therapeutic Massage Establishment License

1. To a corporation not registered to do business in this State; or
2. To a corporation if any principal officer thereof or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction (as defined in Section 22390) within the immediately preceding five {5} years; or
3. To 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; or

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

1. To an applicant who has been given 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.

C. All Licenses

1. To an applicant who has submitted an incomplete application, knowingly made an incorrect statement of a material nature, or failed to supply additional information required by the Town Clerk or reasonably necessary to determine whether the license is suitable; or
2. To an applicant, if such applicant or any person having an actual ownership interest or management authority therein has been denied a license for knowingly making an incorrect statement of a material nature within the immediately preceding five [5] years; or
3. To an applicant, if such applicant or any person having an actual ownership interest or management authority therein has had a license granted pursuant to this Ordinance revoked for any reason within the immediately preceding five [5] years.

SECTION 218.15 – GROUNDS FOR SUSPENSION OR REVOCATION

- A. All Licenses. In addition to the grounds of denial set forth in Section XIV above, any license may be suspended or revoked upon a determination that the licensee:

1. Failed to notify the Town Clerk of any change in material fact set forth in the application for such license; or
 2. Violated any provisions of this Ordinance.
- B. Therapeutic Massage Establishment or Combined Establishment/Therapist License. In addition to the provisions of Subsection A hereof, either a massage establishment license or a combined establishment/therapist license may be suspended or revoked upon a determination that the licensee:
1. Permitted any person to perform therapeutic 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 17A, M.R.S.A., Sections 851 through 855 [Prostitution and Public Indecency]. Such knowledge shall be presumed if there has been a conviction of any such offense within the immediately preceding five [5] years. The applicant or licensee may rebut said presumption by showing that:
 - a. Due diligence was exercised to prevent the recurrence of any such offense; and
 - b. Despite such diligence, he or she did not know and could not reasonably have known of any subsequent offense.

SECTION 218.16 – LICENSES DISPLAYED

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

SECTION 218.17 – AGE RESTRICTIONS

No massage or therapeutic massage shall be practiced on a minor without the written consent of a parent or guardian.

SECTION 218.18 – MESSAGE TABLES

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

SECTION 218.19 – MAINTENANCE AND CLEANING

Every person who conducts or operates a therapeutic 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 218.20 – PROHIBITED ACTIVITIES

- A. No massage therapist shall administer a massage to a client whose genitals are exposed.
- B. No massage therapist shall administer or agree to administer a massage to the genitals or anus of a client.

- 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.
- D. No massage therapist shall perform sexual intercourse, commit a sexual act or make sexual contact as defined in Title 17A; M.R.S.A., Section 251, for pecuniary benefit to himself or a third party.

SECTION 218.21 – CLOSING HOURS

No massage establishment shall be kept open for massage purposes between the hours of 10:00 p.m. and 7:00 a.m.

SECTION 218.22 – SUPERVISION

At all times when open for business, a therapeutic 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 218.23 – LIST OF EMPLOYEES

The therapeutic 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 Town Clerk, or his authorized representative or law enforcement authority, upon request.

SECTION 218.24 – PENALTIES

The violation of any provision of this Ordinance shall be punished by a fine or not less than two hundred fifty [\$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, including but not limited to, revocation of the license.

SECTION 218.25 – APPEALS

An appeal from any final decision of the Town Clerk hereunder may be taken to the Town Council within thirty [30] days. An appeal from any final decision of the Town Council hereunder may be taken by any party to the Superior Court pursuant to Rule 80B of The Maine Rules of Civil Procedure. Any denial, suspension or revocation shall be in writing and shall include notification of the right to appeal and the procedure for appeal.

EMERGENCY EFFECTIVE DATE: Based upon the emergency public health, safety and welfare issues identified in the preamble, this Ordinance shall take effect immediately upon passage.