

Sabattus, Maine – Code of Ordinances

MASSAGE ESTABLISHMENTS ORDINANCE

Section 1. Title

This Ordinance shall be known as the "Town of Sabattus Massage Establishments and Massage Therapist Regulatory Ordinance" and may be referred to by short title as the "Massage Ordinance".

Section 2. Purpose

The Town of Sabattus 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 Sabattus also recognizes that persons without legitimate massage training or experience may masquerade as massage therapists as a cover-up for the exchange of sexual intercourse, sexual contacts or sexual acts for money. 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 3. Definitions

For purposes of this ordinance, the following definitions shall apply unless the context clearly implies otherwise:

Client - means any person who receives a therapeutic massage.

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 with the hands or other parts of the body or with the aid of any instrument or device.

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 for consideration or with the expectation of receiving consideration or any gratuity, whether or not the business has a fixed place of business within town limits.

Massage therapist - means any person who performs therapeutic massage for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

Minor - shall mean any person under the age of eighteen (18) years of age.

Sabattus, Maine – Code of Ordinances

Person - means an individual, partnership, corporation or other entity.

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 a school or institution requiring training equivalent to or surpassing an AMTA/COMTAA approved school, 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 educational and training requirements of an AMTA/COMTAA approved school shall be on the applicant.

Section 4. Exemptions

The following persons shall be exempt from this ordinance while practicing in accordance with the laws of this state: Physicians, physician's assistants, surgeons, osteopaths, nurses, chiropractors, physical therapists, members of the AMTA, barbers, cosmetologists, beauticians and other health and hygiene professionals. Students enrolled in a recognized school who are required to give massages as part of their training shall be exempt from this ordinance.

Section 5. General provisions to apply

Except to the extent that this ordinance contains a contrary provision, all provisions shall apply to this ordinance.

Section 6: Required Licenses

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.

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 town.

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

Sabattus, Maine – Code of Ordinances

Section 7. 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 three (3) months of the effective date of this ordinance.

Any license issued pursuant to this chapter after the effective date hereof shall be valid until December 31, 1997. For any license issued pursuant to this chapter after December 31, 1997, the expiration date will be the 31st day of December of the year issued.

Section 8. Application and Information

Each applicant for a license shall:

1. Complete and file an application on a form prescribed by the town clerk;
2. Deposit the prescribed license fee as listed in Town of Sabattus Fee Schedule in advance with the town clerk;
3. Submit the completed application to the town clerk, together with attested copies of the ordinances of incorporation and bylaws, if the applicant is a corporation; evidence of partnership, if a partnership; or ordinances of association and bylaws, if the applicant is an association, as well as a list of all officers and directors;
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 three (3) 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;
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 therapist licensee; and
7. Pay the required processing fee as listed in Town of Sabattus Fee Schedule.

If an application is denied or withdrawn, the license fee shall be refunded to the applicant. The processing fee shall not be refunded.

Sabattus, Maine – Code of Ordinances

Section 9. Qualifications of Applicant, Officers

An applicant for a massage establishment license or combined massage establishment/massage therapist license, or any owner, officer, manager or partner of an applicant, cannot have any convictions for Class A, B or C crimes, crimes involving moral turpitude, or of violating any laws involving gambling, drugs or liquor laws within this or any other State within the five (5) years immediately preceding the date of application.

Section 10. Investigation of Applicant, Officers

Upon receipt of an application or upon notice of a change of ownership, officers, managers or partners of the applicant:

1. The building inspector shall verify that the premises where the establishment will be located complies 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 findings in writing to the town clerk;
2. The town clerk shall review the application and other documents and determine whether such documents comply with all of the requirements of this ordinance;
3. The health officer shall inspect the proposed location to determine whether the applicable ordinances relating to health and safety have been satisfied and shall report findings in writing to the town clerk;
4. The fire chief or his/her agent shall inspect the proposed location to determine if all town ordinances concerning fire and safety have been satisfied and shall report findings in writing to the town clerk; and
5. The police chief or his/her agent shall investigate the application, including the criminal history record information required under section 9, and shall report findings in writing to the town clerk.

Section 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 by:

1. Providing evidence of the satisfactory completion of all formal course work and training in massage therapy as required for graduation from a recognized school. The evidence shall be in the form of a diploma, certificate of graduation or its equivalent; or

Sabattus, Maine – Code of Ordinances

2. A written statement from a Physician, Nurse, Osteopath, Chiropractor, Physical Therapist, or member of the AMTA stating that that person refers clients to the applicant for therapeutic massage.

Section 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. All names, including but not limited to maiden names, ever used by the applicant must be noted on the application.

Any license improperly obtained shall be void.

Section 13. Use of License

No person shall use to his own benefit or to the benefit of another, any license not issued to him in accordance with this chapter.

Section 14. Standards for Denial

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

1. Therapeutic massage establishment license:

- a. To a corporation not registered to do business in this State; or
- b. 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 within the immediately preceding five (5) years; or
- c. 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.

2. Massage therapist license, or combined massage establishment/massage therapist license:

- a. To an applicant who has been given a disqualifying criminal conviction at any time during the five (5) years immediately preceding application; or
- b. To an applicant who is not at least eighteen (18) years of age.

Sabattus, Maine – Code of Ordinances

3. All licenses:

- a. 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 Board of Selectmen or reasonably necessary to determine whether a license may be issued; or
- b. 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
- c. 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 15. Grounds for Suspension or Revocation

In addition to the grounds for denial set forth in Section 14, any license may be suspended or revoked upon a determination that the licensee:

1. All licenses:

- a. Failed to notify the clerk of any change in material fact set forth in the application for such license; or
- b. Violated any provision of this Ordinance.

2. *Therapeutic massage establishment or combined establishment/therapist license:*

- a. Permitted any person to perform therapeutic 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 chapter 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 has been a conviction for any such offense within the immediately preceding five (5) years. 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.

Sabattus, Maine – Code of Ordinances

Section 16. License to be Displayed / Produced

A valid therapeutic 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 massage therapist license or combined massage establishment/massage therapist license must be readily available to be produced immediately if demanded of the licensee.

Section 17. Age Restrictions

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

Section 18. Massage Tables

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

Section 19. Maintenance and Cleaning

Every person who conducts or operates a therapeutic massage establishment shall keep the establishment in a clean and sanitary condition at all times. 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 20. Prohibited Activities

1. No massage therapist shall administer a massage to a client whose genitals are exposed.
2. No massage therapist shall administer or agree to administer a massage to the genitals or anus of a client.
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.
4. No massage therapist shall perform sexual intercourse, commit a sexual act or make sexual contact, as defined in 17-A M.R.S.A., section 251, for profit or for personal pleasure to himself or another.

Sabattus, Maine – Code of Ordinances

Section 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 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 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 Chief of Police or his/her designee, the town clerk or his/her designee, upon request.

Section 24. Violations; Penalties

The violation of any provision of this ordinance shall be punished by a fine as listed in Town of Sabattus Fee Schedule for each offense.

Each act of violation and every day upon which any such violation shall continue to 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 25. Appeals

An appeal of any final decision made by the town clerk may be taken to the Board of Selectmen within thirty (30) days. An appeal of any final decision of the Board of Selectmen may be taken by any party to the superior court in accordance with the provisions of 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.

Sabattus, Maine – Code of Ordinances

Accepted:

Original Adoption:

Revision Dates:
