

ARTICLE VIII. MESSAGE ESTABLISHMENTS AND MESSAGE THERAPISTS*

***Editor's note:** An ordinance of May 28, 1997, did not specifically amend the Code; hence, inclusion of §§ 1--18 of such ordinance as Art. VIII, §§ 8-311--8-328, was at the discretion of the editor.

Sec. 8-311. Title.

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

(Ord. of 5-28-97, § 1)

Sec. 8-312. Purpose.

The purpose of this article is to regulate the practice of massage therapy in order to promote the public health and safety and the general welfare.

(Ord. of 5-28-97, § 2)

Sec. 8-313. Definitions.

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

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

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

Town means the Town of Falmouth.

The following persons shall be exempt from this article:

(1) Members of other professions licensed, certified or registered by the state, including but not limited to physicians, chiropractors, physical therapists, cosmetologists or registered nurses performing soft tissue manipulation consistent with the laws of the state governing their practices, provided they do not use the title "massage therapist" unless they choose to meet the requirements of this article.

(2) Individuals who practice other forms of tissue work exclusive of massage therapy, such as rolfing, Trager, reflexology, Shiatsu Reiki and polarity, if these practitioners do not use the title "massage therapist" unless they choose to meet the requirements of this article.

(Ord. of 5-28-97, § 3)

Sec. 8-314. Massage therapist license.

No person shall work as a massage therapist in the town without a valid massage therapist license issued pursuant to this article.

(Ord. of 5-28-97, § 4)

Sec. 8-315. Compliance by existing massage therapists.

(a) Any person presently operating as a massage therapist in the town on the effective date of this article shall comply with the terms of this article starting on its effective date and shall obtain a license hereunder within three (3) months of the date of this article.

(b) Any license issued pursuant to this article between the effective date hereof and December 31, 1997, shall be valid until December 31, 1998. For any license issued pursuant to this article after December 31, 1997, the expiration date in section 8-318 shall apply.

(Ord. of 5-28-97, § 5)

Sec. 8-316. Reserved.

Editor's note: An amendment adopted Dec. 16, 1997, deleted § 8-316, council action; notice of hearing, derived from an ordinance adopted May 28, 1997, § 6.

Sec. 8-317. Application and information.

Each applicant for a license shall:

(1) Complete and file an application on a form prescribed by the town clerk;

(2) Pay an annual license fee of twenty five dollars (\$25.00); an initial application fee of \$75.00, and an annual re-newel fee of \$50.00.

(3) File the release authorized by 16 M.R.S.A. Section 620(6) (Criminal History Record Information Act) with the application; and

If an application is denied or withdrawn, the license fee and costs for published or mailed notices shall not be refunded.

(Ord. of 5-28-97, § 7; Amend. of 12-16-97)

Sec. 8-318. Qualifications of applicant.

(a) The town clerk shall review the application and other documents and determine whether such documents comply with all the requirements of this article. If compliance is determined, the town clerk shall issue the license.

(b) The police chief or his agent shall investigate the applicant, including the criminal history record information required under section 8-317, and shall report his findings to the town clerk.

(Ord. of 5-28-97, § 8; Amend. of 12-16-97)

Sec. 8-319. Basic proficiency.

Each applicant for a massage therapist license must hold a valid certification as a massage therapist issued by the State of Maine pursuant to Chapter 127 of Title 32 of the Maine Revised Statutes Annotated.

(Ord. of 5-28-97, § 9)

Sec. 8-320. 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 article. All names, including but not limited to maiden name, ever used by the applicant must be noted on the application. Any license so secured shall be void.

(Ord. of 5-28-97, § 10)

Sec. 8-321. Standards for denial.

A license shall be denied to any applicant:

- (1) Who has been convicted of a crime at any time during the five (5) years immediately preceding application that involves dishonesty or false statement or that directly relates to the practice of massage or conviction of a crime for which incarceration for one (1) year or more may be imposed;
- (2) Who is not at least eighteen (18) years of age;
- (3) 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 issuable; or
- (4) Who does not hold a valid state certification as a massage therapist.

(Ord. of 5-28-97, § 11; Amend. of 12-16-97)

Sec. 8-322. Grounds for suspension or revocation.

Any license may be suspended or revoked upon 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 provision of this article.

(Ord. of 5-28-97, § 12)

Sec. 8-323. Licenses displayed.

A valid massage therapist establishment license issued by the town shall be displayed at all times in an open and conspicuous place in the massage establishment or must be readily available to be produced immediately if demanded of the licensee.

(Ord. of 5-28-97, § 13)

Sec. 8-324. 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 genital or anus of a patron.
 - (c) No massage therapist shall administer a massage unless he or she is fully clothed in non-transparent clothing of the type customarily worn by massage therapists while administering a massage.
 - (d) No massage therapist shall administer a massage on a minor without the written consent of the minor's parent or legal guardian.
- (Ord. of 5-28-97, § 14)

Sec. 8-325. Closing hours.

No massage establishment shall be kept open for massage purposes between the hours of 10:00 p.m. and 6:00 a.m. provided that any massage begun before 10:00 p.m. may be completed.

(Ord. of 5-28-97, § 15)

Sec. 8-326. 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 article occur.

(Ord. of 5-28-97, § 16)

Sec. 8-327. 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 authorized deputy, the town clerk or his/her representative upon request.

(Ord. of 5-28-97, § 17)

Sec. 8-328. Penalties.

The violation of any provision of this article shall be punished by a fine not less than one hundred dollars (\$100.00) per day. 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 article by appropriate action.

(Ord. of 5-28-97, § 18)

Secs. 8-329--8-340. Reserved.