

Chapter 16 MASSAGE ESTABLISHMENTS*

***Editor's note--**Ord. No. 265-91, adopted Mar. 4, 1991, amended this chapter in its entirety, in effect repealing former Arts. I and II, §§ 16-1--16-6, relative to massage establishments and licenses, and enacting similar new provisions in lieu thereof as Arts. I and II, §§ 16-1--16-21. Formerly, Ch. 16 derived from Ord. No. 55-86, § 1, adopted Mar. 3, 1986.

Cross reference(s)--Licenses, Ch. 15.

Art. I. In General, §§ 16-1--16-10

Art. II. Licenses, §§ 16-11--16-21

ARTICLE I. IN GENERAL

Sec. 16-1. Purpose.

The purpose of this chapter is to regulate the operation of massage establishments in order to promote the public health, safety and general welfare.
(Ord. No. 265-91, 3-4-91)

Sec. 16-2. Definitions.

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

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

Massage therapist means any person who performs therapeutic

massage for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

Patron means any person who receives a therapeutic massage.

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

Recognized school means any school or institution of learning which has for its purpose the teaching of the theory, method, profession and work of massage therapy 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.

(Ord. No. 265-91, 3-4-91)

Sec. 16-3. Exemptions.

The following persons shall be exempt from this chapter if duly licensed by and while practicing in accordance with the laws of this State: Physicians, physician's assistants, surgeons, osteopaths, nurses, chiropractors, physical therapists, barbers, cosmetologists, and massage therapists who are members of the American Massage Therapy Association or the Association of Bodywork Massage Professionals.

(Ord. No. 265-91, 3-4-91; Ord. No.79-03/04, 10-20-03)

Sec. 16-4. General provisions to apply.

Except to the extent that this chapter contains a contrary provision, all provisions of chapter 15 shall apply to this chapter.

(Ord. No. 265-91, 3-4-91)

Sec. 16-5. Massage tables.

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

(Ord. No. 265-91, 3-4-91)

Sec. 16-6. 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.
(Ord. No. 265-91, 3-4-91)

Sec. 16-7. 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 nontransparent clothing of the type customarily worn by massage therapists while administering a massage.

(Ord. No. 265-91, 3-4-91)

Sec. 16-8. Closing hours.

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

(Ord. No. 265-91, 3-4-91)

Sec. 16-9. 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 chapter occur.

(Ord. No. 265-91, 3-4-91)

Sec. 16-10. 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, his authorized deputy, the city clerk or her representative upon request.

(Ord. No. 265-91, 3-4-91)

ARTICLE II. LICENSES

Sec. 16-11. Required.

(a) *Therapeutic massage establishment license.* No person shall operate a therapeutic massage establishment without a valid therapeutic 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/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 therapeutic 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 subsections (b) or (c) above, who is otherwise qualified to obtain such a license except for compliance with section 16-16(b), to comply with section 16-16(b), a conditional massage therapist license may be issued under the following conditions:

- (1) All provisions of chapter 16 shall apply to a licensee under this subsection, except section 16-16.
- (2) The licensee under this subsection shall designate one (1) massage therapist or combined massage establishment/massage therapist licensed by the City of Portland as the supervisor for the licensee.
- (3) The licensee under this subsection may designate no more than one (1) licensed supervisor pursuant to subsection (d)(2) above unless such licensed supervisor shall voluntarily surrender his/her license.
- (4) The designated licensed supervisor may supervise only two (2) or fewer conditional massage therapists per license year.
- (5) Licenses issued pursuant to this subsection may not be renewed.

(Ord. No. 265-91, 3-4-91)

Sec. 16-12. Licenses displayed.

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 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. (Ord. No. 265-91, 3-4-91)

Sec. 16-13. Standards for denial.

In addition to the provisions of chapter 15, a license under this article shall be denied to the following persons:

(a) *Therapeutic massage establishment license:*

1. To a corporation not registered to do business in this state;
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 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.

(b) *Massage therapist, combined massage establishment/massage therapist, or conditional massage therapist:*

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.

The clerk shall make and keep a written record of every decision to deny an application for any license hereunder. (Ord. No. 265-91, 3-4-91)

Sec. 16-14. Grounds for suspension or revocation.

(a) *All licenses.* In addition to the grounds for revocation or suspension set forth in chapter 15 and section 16-13, any license may be suspended or revoked upon a determination that the licensee:

- (1) Failed to notify the clerk of any change in material fact set forth in the application for such license; or
- (2) Violated any provision of this chapter or of chapter 15.

(b) *Therapeutic massage establishment or combined establishment/therapist license.* In addition to the provisions of subsection (a), either a massage establishment license or 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 chapter 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 such presumption by showing that due diligence was exercised to prevent the recurrence of any such offense and, despite such diligence, he or she did not know and could not reasonably have known of any subsequent offense.

(Ord. No. 265-91, 3-4-91)

Sec. 16-15. Application for therapeutic massage establishment, combined massage establishment/massage therapist and massage therapist licenses.

Any person desiring a license pursuant to this chapter shall file a written, signed application with the city 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 two (2) front face photographs of the applicant taken within thirty (30) days of application, of such size as the clerk may specify.

(Ord. No. 265-91, 3-4-91)

Sec. 16-16. 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 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 therapeutic 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 City of Portland;
- (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 therapist license issued by the City of Portland, which shall state that such 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 of the certifying exam given by American Massage Therapy Association.

(Ord. No. 265-91, 3-4-91)

Sec. 16-17. 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 chapter. 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.

(Ord. No. 265-91, 3-4-91)

Sec. 16-18. 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 chapter.

(Ord. No. 265-91, 3-4-91)

Sec. 16-19. Compliance of existing therapists and massage establishments.

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

(b) Any person who has held a valid massage establishment license issued by the City of Portland within the last year, which license has not been suspended or revoked, or provides evidence of continuous practice as a massage therapist for the preceding year shall not be required to comply with section 16-16 if application for a license hereunder shall be made within three (3) months of the effective date of this chapter.

(c) Any license issued pursuant to this chapter between the effective date hereof and September 30, 1991, shall be valid until September 30, 1992. For any license issued pursuant to this chapter after September 30, 1991, the expiration date in section 15-12 shall apply.

(Ord. No. 265-91, 3-4-91)

Sec. 16-20. Severability.

The provisions of section 1-14 of this Code shall apply to this chapter.

(Ord. No. 265-91, 3-4-91)

Sec. 16-21. Penalty.

The violation of any provision of this chapter 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 city may enjoin or abate any violation of this chapter by appropriate action.
(Ord. No. 265-91, 3-4-91)