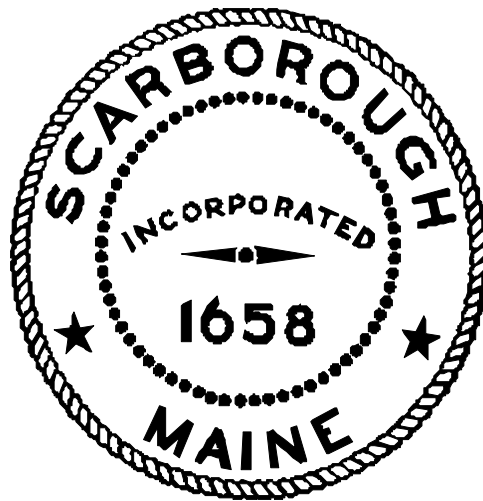


CHAPTER 1011
TOWN OF SCARBOROUGH
ORDINANCE REGULATING PERSONS
AND ESTABLISHMENTS
PROVIDING SERVICES SIMILAR TO
MASSAGE THERAPY ORDINANCE



ADOPTED NOVEMBER 18, 1992
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**CHAPTER 1011
TOWN OF SCARBOROUGH
ORDINANCE REGULATING PERSONS AND ESTABLISHMENTS
PROVIDING SERVICES SIMILAR TO MASSAGE THERAPY**

ARTICLE I - GENERAL PROVISIONS

Section 1. Purpose.

The purpose of this Ordinance is to regulate services which appear similar to massage therapy as defined in and regulated by Chapter 125 of Title 32 of the Maine Revised Statutes but which are not regulated under that Chapter (hereinafter “para-massage.”)

Section 2. Definitions.

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

DISQUALIFYING CRIMINAL CONVICTIONS:

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

MASSAGE THERAPY:

The professional practice of massage therapy as defined in 32 M.R.S.A. section 14301(4).

PARA-MASSAGE:

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, and which is not massage therapy.

PARA-MASSAGE ESTABLISHMENT:

Any business, including but not limited to sole proprietorship, in which the business operation consists of providing or making available para-massage 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.

PARA-MASSAGER:

Any person who performs a para-massage for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

PATRON:

Any person who receives a para-massage.

PERSON:

Any individual, partnership, corporation or other entity.

Section 3. Exceptions.

The following shall be exempt from this Ordinance while duly licensed or registered under and practicing in accordance with the laws of this State: Massage Therapists as defined in 32 M.R.S.A. section 14301(3), Physicians, Physicians' assistants, Surgeons, Osteopaths, Nurses, Chiropractors, Physical therapists, Barbers, Cosmetologists, Beauticians and other health and hygiene professionals.

Section 4.

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

Section 5. Maintenance and Cleaning.

Every person who conducts or operates a para-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.

- A. No para-massager shall administer a para-massage to a patron whose genitals are exposed.
- B. No para-massager shall administer or agree to administer a para-massage to the genitals or anus of patron.
- C. No para-massager shall administer a para-massage unless he/she is fully clothed with non-transparent clothing.

Section 7. Closing Hours.

No para-massage establishment shall be kept open between the hours of 12 midnight and 6:00 A.M.

Section 8. Supervision.

At all times when open for business, a para-massage establishment shall have upon the premises a licensed para-massager or person who possess a combination para-massage establishment/para-massager 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.

A para-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 Town Clerk or the Clerk's representative upon request.

ARTICLE II - LICENSES

Section 1. License Required.

A. ESTABLISHMENT LICENSE.

No person shall operate a para-massage establishment without first having obtained a valid para-massage establishment license issued by the Scarborough Town Council. A separate license shall be required for each para-massage establishment.

B. PARA-MASSAGER LICENSE.

No person shall work as a para-masser without a valid para-masser license or combined para-massage establishment/para-masser license issued by the Scarborough Town Council.

C. COMBINED ESTABLISHMENT/PARA-MASSAGER LICENSE.

A sole practitioner who employs no para-masser other than himself/herself may apply for a combined para-massage establishment/para-masser license.

Section 2. Licenses Displayed.

A valid para-massage establishment license shall be displayed at all times in the para-massage establishment for which it was issued. A valid para-masser license or combined para-massage establishment/para-masser license must be readily available to be produced immediately if demanded of the licensee.

Section 3. Standards for Denial.

A. Para-Massage Establishment License.

The Town Council may deny a license for a para-massage establishment if it finds that:

1. The applicant does not have a legal right to occupy the premises for which the license is sought;
2. The premises, business or activity are not in compliance with other local ordinances;
3. The applicant is a corporation that is not registered to do business in the State;
4. Any principal officer of the corporation or any person having an actual ownership interest or management authority therein, or the applicant, if other than a corporation, has a disqualifying criminal conviction within the immediately preceding five (5) years.

B. Para-Massager, Combined Para-Massage Establishment/Para-Massager.

The Town Council may deny a license for a para-massager or combined para-massage establishment/para-massager for the following reasons:

1. The applicant had a disqualifying criminal conviction at any time during the five (5) years immediately preceding application; or
2. The applicant is not at least eighteen (18) years of age.

The Town Council shall make and the Town Clerk shall keep a written record of each decision to deny an application for any license under this ordinance.

Section 4. Grounds for Suspension or Revocation.

A. All licenses.

In addition to the grounds for denial as set forth in Article II, Section 3, A & B, any license may be suspended or revoked upon a determination that the licensee:

1. Failed to notify the Clerk of any change in material facts set forth in the application for such license; or
2. Violated any provision of this Ordinance or of any other Ordinance of the Town of Scarborough.

B. Para-Massage Establishment or Combined Para-Massage Establishment/Para-Massager License.

In addition to the provisions of Article II Sub-Section 4, a para-massage establishment license or combined para-massage establishment/para-massager license may be suspended or revoked upon a determination that the licensee:

1. Permitted any person to perform a para-massage without a valid license to do so;
2. Permitted or allowed an employee or para-massager to violate any provisions of this Ordinance on the premises of the para-massage establishment or in the course of conduct of the business of the para-massage establishment; or
3. Knowingly permitted any violation of Title 17-A, M.R.S.A., Sections 851 and 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 know of any subsequent offense.

Section 5. Application for Para-Massage Establishment, Combined Para-Massage Establishment/Para-Massage Therapist and Para-Massage Therapist License.

Any persons 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 Clerk. An application for a combined para-massage establishment/para-massage therapist license or for a para-massage therapist's license shall be accompanied by a signed photograph of the applicant taken with thirty (30) days of the application, of such size as the Clerk may specify. [amended 02/16/2005]

Section 6. Obtaining License by Fraud.

A. No person shall make any false, untruthful or fraudulent statements, 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.

B. Any license secured by fraud, deceit or concealment shall be deemed to be null and void.

Section 7. Use of License.

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 8. Existing Para-Massage and Para-Massage Establishments.

A. Any person presently operating as a para-massager and/or operating a para-massage establishment in Scarborough on the effective date of this Ordinance shall comply with the terms of this Ordinance by obtaining a license within sixty (60) days of the effective date.

Section 9. Severability.

In the event that any Section, sub-section, or any portion of this Ordinance shall be declared by any competent court to be invalid for any reason, such declaration shall not be deemed to affect the validity of any other Section, sub-section or portion of this Ordinance.

Section 10. Penalty.

The violation of any provision of this Ordinance shall be a civil violation punished by a fine of not less than Two Hundred Fifty (\$250.00) Dollars nor more than Five Hundred (\$500.00) dollars for each offense. Each act of violation and every day upon which any such violation occurs shall constitute a separate offense. In addition to such penalty, the Town may enjoin or abate any violation of this Ordinance by appropriate action.

Section 11. Term of License.

Licenses issued pursuant to this Ordinance shall be for a term of no more than one year and shall expire annually on September 30th.

Section 12. Application Fees.

The fees shall be as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council for the licenses issued under this Ordinance:

The fees are payable at the time of application and are non-refundable.

Section 13. Applicability to Pending Applications.

Notwithstanding anything to the contrary in 1 M.R.S.A. section 302, the provisions of this Ordinance shall apply to any application or request to operate a para-massage establishment previously submitted to the Town of Scarborough or to any of its officers or employees.