

**City of South Portland
Office of the City Clerk
P.O. Box 9422
South Portland, ME 04116-9422
207-767-7628**

Massage Establishment Application
§14-601 to §14-626; 32 M.R.S.A., §14301 et seq

From _____ to September 30, _____

Circle One: Sole Proprietor Partnership¹ Corporation² Association³

- 1: If applicant is a Partnership, please attach Evidence of the Existence of the Partnership.
- 2: If applicant is a Corporation, please attach Attested Copies of the Articles of Incorporation and Corporate By-Laws.

- 3: If applicant is an Association, please attach Articles of Association and by-laws.

Parent Company Name (if applicable): _____

Address: _____ City: _____ State: _____ Zip: _____

Contact Person: _____ Telephone: _____

Hours of Operation: _____ Email: _____

South Portland Business Name: _____

South Portland Business Address: _____ Telephone: _____

Owner and Address of Premises: _____

Name of Manager at Business: _____

Emergency Contact: _____

Does the applicant, or any officer of a corporate applicant, or any partner of a partnership applicant, or any person having an actual ownership interest or management authority in this business, have any arrests or convictions for any offenses, other than traffic violation, during the past five (5) years? _____ If yes, state particulars and disposition: _____

Please attach an affidavit identifying all of the applicant's owners, officers, managers and/or partners and their current place(s) of residence as well as their places of residence during the three years immediately preceding the date of this application, as well as all birth dates.

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I/we hereby certify that all statements made in this application are true. I/we agree and understand that any misstatements or omissions of material fact herein will result in refusal of license or revocation of license if one has already been issued.

Further, I/we hereby certify that I/we have read the City of South Portland's Massage Establishments and Massage Therapists Ordinance and am/are aware of its requirements.

In addition, I/we hereby authorize the release of any criminal history record information to the City Clerk's office or licensing authority. I/we understand that this information shall become public record, and I/we hereby waive any rights of privacy with respect hereto.

I/we agree that all taxes and accounts pertaining to the premises will be paid prior to issuance of license.

License Fee:	\$60.00
Processing Fee:	\$20.00
Total:	\$80.00

Authorized Signature

Print Name & Title

Date

Municipal Use Only

Date of Application: _____ Date Paid: _____ Receipt #: _____

New: _____ Renewal: _____ Map and Lot #: _____ RE Taxes Paid: _____

Personal Property Tax #: _____ Paid: _____

Building Inspector Approved Yes No Signature _____ Signed Electronically

Comment if disapproved _____

Fire Chief Approved Yes No Signature _____

Comment if disapproved _____

Health Officer Approved Yes No Signature _____

Comment if disapproved _____

Police Chief Approved Yes No Signature _____

Comment if disapproved _____

City Clerk Approved Yes No Signature _____

ARTICLE XII. MESSAGE ESTABLISHMENTS AND MESSAGE THERAPISTS

DIVISION 1. GENERALLY

Sec. 14-601. Title.

This article shall be known as the "City of South Portland Massage Establishment and Massage Therapist Regulatory Ordinance" and may be referred to by short title as the "massage ordinance."

Sec. 14-602. Purpose.

The City of South Portland recognizes that the practice of legitimate massage therapy by trained and experienced therapists is a valuable component of our health care system. The City of South Portland also recognizes that persons without legitimate massage training or experience may masquerade as massage therapists as a facade 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.

Sec. 14-603. Definitions.

For purposes of this Article, 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 city 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.

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

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), Associated Bodywork & Massage Professionals/International Massage & Somatic Therapies Accreditation Council (ABMP/IMSTAC), or a school or institution requiring training equivalent to or surpassing an AMTA/COMTAA-approved or ABMP/IMSTAC-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 or ABMP. 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 or ABMP/IMSTAC-approved school shall be on the applicant.

Sec. 14-604. Exemptions.

The following persons shall be exempt from this Article while practicing in accordance with the laws of this state: Physicians, physician's assistants, surgeons, osteopaths, nurses, chiropractors, physical therapists, members of the AMTA, members of ABMP, 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 Article.

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Sec. 14-605. General provisions to apply.

Except to the extent that this Article contains a contrary provision, all provisions of Chapter 14 shall apply to this Article.

DIVISION 2. LICENSES

Sec. 14-606. Required.

- (a) *Therapeutic massage establishment license.* No person shall operate a therapeutic massage establishment without a valid therapeutic massage establishment license issued by the City. 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 City.
- (c) *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.

Sec. 14-607. Compliance of existing therapists and massage establishments.

- (a) Any person presently operating as a massage therapist and/or operating a massage establishment in the City as defined herein on the effective date of this Article shall comply with the terms of this Article by obtaining a license hereunder within three (3) months of the effective date of this Article.
- (b) Any license issued pursuant to this Chapter between the effective date hereof and September 3, 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 14-3 shall apply.

Sec. 14-608. Reserved.

Sec. 14-609. Application and information.

Each applicant for a license shall:

- (1) Complete and file an application on a form prescribed by the City Clerk;

- (2) Deposit the license fee as specified in the Schedule of License, Permit and Application Fees established by City Council order in advance with the City Clerk;
- (3) Submit the completed application to the City 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;
- (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 City Clerk may specify;
- (6) File the release authorized by 16 M.R.S.A. § 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 license; and
- (7) Pay the required processing fee as specified in the Schedule of License, Permit and Application Fees established by City Council order.

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

Sec. 14-610. Qualifications of applicant, officers.

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 as a Class A, B or C crime, a crime involving moral turpitude, nor of violating any of the gambling, drug or prohibitive liquor laws of either the United States or the State of Maine or any other state within the five (5) years immediately preceding the date of application.

Sec. 14-611. Investigation of applicant, officers.

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

- (1) The Building Inspector shall verify that the premises at which the establishment will be located comply with all applicable ordinances of the City including, but not limited to, the building code, electrical code, plumbing code and zoning ordinance and shall report findings in writing to the City Clerk;
- (2) The City Clerk shall review the application and other documents and determine whether such documents comply with all of the requirements of this Article;
- (3) 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 findings in writing to the City Clerk;
- (4) The Fire Chief or his/her designee shall inspect the location or proposed location to determine if all City ordinances concerning fire and safety have been satisfied and shall report findings in writing to the City Clerk; and
- (5) The Police Chief or his/her designee shall investigate the application, including the criminal history record information required under Section 14-610, and shall report findings in writing to the City Clerk.

Sec. 14-612. 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:

- (1) 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 form of a diploma or certificate of graduation or equivalent documentation; or
- (2) A written statement from a physician, nurse, osteopath, chiropractor, physical therapist, or member of the AMTA or ABMP stating that that person refers clients to the applicant for therapeutic massage.

Sec. 14-613. 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 Chapter. 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.

Sec. 14-614. 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.

Sec. 14-615. Standards for denial.

A license under this division 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.
- (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 City Council or reasonably necessary to determine whether the license is issuable; 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.

Sec. 14-616. Grounds for suspension or revocation.

- (a) *All licenses.* In addition to the grounds for denial set forth in Section 14-613, any license may be suspended or revoked upon a determination that the licensee:
- (1) Failed to notify the City Clerk of any change in material fact set forth in the application for such license; or
 - (2) Violated any provision of this Article.
- (b) *Therapeutic massage establishment or combined establishment/therapist license.* In addition to the provisions of subsection (a) hereof, 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. §§ 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.

DIVISION 3. OPERATING REQUIREMENTS

Sec. 14-617. 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 massage therapist license or combined massage establishment/massage therapist license must be readily available to be produced immediately if demanded of the licensee.

Sec. 14-618. Age restrictions.

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

Sec. 14-619. Massage tables.

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

Sec. 14-620. 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.

Sec. 14-621. Prohibited activities.

- (a) No massage therapist shall administer, offer to administer or agree to administer a massage to a client whose genitals are exposed.
- (b) No massage therapist shall administer, offer to administer or agree to administer a massage to the genitals or anus of a client.
- (c) No massage therapist shall administer, offer to administer or agree to 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.
- (d) No client shall expose or touch his or her genitals while receiving a massage.
- (e) No client shall permit a massage to be administered to his or her genitals or anus.

Sec. 14-622. 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.

Sec. 14-623. 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.

Sec. 14-624. 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 Police Chief or his authorized deputy and the City Clerk or his representative, upon request.

DIVISION 4. PENALTIES AND APPEALS

Sec. 14-625. Violations; penalties.

The violation of any provision of this Article shall be punished by a fine not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00) 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 Article by appropriate action, including but not limited to revocation of the license.

Sec. 14-626. Appeals.

An appeal from any final decision of the City Clerk may be taken to the City Council within thirty (30) days. An appeal from any final decision of the City Council may be taken by any party to the Superior Court in accordance with the provisions of Rule 808 of the Maine Rules of Civil Procedure. Any denial, suspension or revocation shall be in writing and shall include notification of the right to and procedure for appeal.