

Enacted
6/14/94

TOWN OF BERWICK
MESSAGE AND SEXUAL CONTACT
ORDINANCE

Section 1. **Purpose.**

This Ordinance is enacted to regulate the operation and licensing of the business of massage therapy within the Town of Berwick, and to prohibit certain acts performed for compensation, in order to promote the public health and safety and the general welfare.

Section 2. **Power.**

The authority of the Town of Berwick to enact this Ordinance is in accordance with its powers of Home Rule contained in Article VIII, Section 1 of the Maine Constitution.

Section 3. **Definitions.**

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

- (a) **Board**: The Board of Selectmen for the Town of Berwick.
- (b) **Massage or Massage Therapy**: A scientific or skilful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone and circulation and promoting health and physical well being. The term includes, but is not limited to 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.
- (c) **Massage establishment**: Any business entity engaged in the business of providing or making available massages in the Town of Berwick 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 Town limits.
- (d) **Massage therapist**: Any person who performs massage therapy for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

- (e) Minor: Any person under the age of eighteen (18) years of age.
- (f) Patron: Any person who receives a therapeutic massage.
- (g) Person: Any individual, partnership, corporation or other entity.
- (h) Recognized school: 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.

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 Article.

Section 5. Prohibited Acts.

- (a) Massage Establishment License. No person shall operate a massage establishment without a valid therapeutic massage establishment license issued by the Board of Selectmen for the Town of Berwick. 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 issued by the Board of Selectmen for the Town of Berwick.
- (c) Other Prohibited Acts.
 - (1) No person within the Town of Berwick acting as a massage therapist, or in any other capacity shall perform

- sexual intercourse, commit a sexual act, or make sexual contact as defined in 17 M.R.S.A. Section 251, for pecuniary benefit to himself or herself or a third party.
- (2) No massage therapist shall administer a massage to a client whose genitals are exposed.
 - (3) No massage therapist shall administer or agree to administer a massage to the genitals or anus of a client.
 - (4) 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.

Section 6. Compliance.

- (a) Any person presently operating as a massage therapist and/or operating a massage establishment in the Town of Berwick on the effective date of this Ordinance, shall comply with the terms of this Ordinance starting on its effective date and shall apply for a license hereunder within thirty (30) days of the effective date of this Ordinance or shall be held in violation.
- (b) Any license issued pursuant to this Ordinance between the effective date hereof and December 31, 1994, shall be valid until December 31, 1995.

Section 7. Application.

Each applicant for a license shall do the following:

- (a) Complete and file an application on a form prescribed by the Board, or if such an application form is not available, on the applicant's own form which contains the required information;
- (b) Along with the application, remit the following license fees in advance with the Board;

Massage Establishment	\$75.00
Massage Therapist	\$50.00
- (c) Submit the completed application to the Board of Selectmen, together with attested copies of

the articles of incorporation and bylaws, if the applicant is a corporation; evidence of partnership, of a partnership; or articles of association and bylaws, if the applicant is an association, as well as a list of all officers and directors;

- (d) 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;
- (e) Submit two (2) front face photographs of the applicant taken within thirty (30) days of the application, not smaller than 2" x 3" nor larger than 3 1/2" x 3 1/2";
- (f) File the release authorized by 16 M.R.S.A. Section 620(6) (Criminal History Record Information Act) with the application of each applicant.

Section 8. Duration of License.

- (a) The license issued pursuant to this Ordinance is on an annual basis and will expire as of December 31st of the calendar year.
- (b) Any application for a renewal of license, which shall contain the same information as the prior application, shall incur a renewal fee of \$25.00 in lieu of the application fee. *#25.00 fee*
- (c) If an application is denied or withdrawn half of the license fee or renewal fee shall be refunded to the applicant.

Section 9. Investigation of Applicant.

Upon receipt of a completed application, the Board shall cause to be conducted the following investigation:

- (a) The Code Enforcement Officer shall verify that the premises at which 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 the findings in writing to the Board of Selectmen;
- (b) If requested by the Codes Enforcement Officer or the Board, 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 the findings in writing to the Board of Selectmen;

- (c) If requested by the Codes Enforcement Officer or the Board, the Fire Chief or his designee shall verify the premises at which the establishment will be located complies with all applicable fire and safety codes.
- (d) If requested by the Board, a law enforcement officer shall investigate the application including the criminal history record information of the applicant or others, as required under this Ordinance.

Section 10. Basic Proficiency.

Each applicant for a massage therapist license shall be licensed by the State of Maine and shall show proof of basic proficiency in the field of massage therapy which may be satisfied by:

- (a) 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
- (b) 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 11. Standards for Denial.

A license under this Ordinance shall be denied by the Board to the following persons:

- (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.
- (b) To an applicant if that person or any owner, officer, manager or partner of the applicant has been convicted of a crime, classified under Title M.R.S.A. Section 17 otherwise known as the Maine Criminal Code, as a class

A, B, or C crime, or any crime involving dishonesty or sexual misconduct, which crime directly relates to the practice of massage therapy, within the two (2) years immediately preceding the date of the application.

Section 12. Grounds for Suspension or Revocation.

(a) All licenses. Any license may be suspended or revoked by the Board of Selectmen upon a determination that the licensee:

- (1) failed to notify the Board of Selectmen of any change in material fact set forth in the application for such license; or
- (2) violated any provision of this Ordinance.

(b) Therapeutic massage establishment license. In addition to the provisions of subsection (a), a massage establishment license may be suspended or revoked by the Board of Selectmen 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 or massage therapist to violate any provision to this Ordinance 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. Section 851 and 855 on the premises. Such knowledge shall be presumed if there have been two (2) or more convictions for any such offense within any one-year period.

Section 13. 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 must be readily available to be produced immediately if demanded of the licensee.

Section 14. Age Restrictions.

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

Section 15. 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.

Section 16. Hours of Operation.

No massage establishment shall be kept open for massage purposes between the hours of 10:00 p.m. and 7:00 a.m.

Section 17. Supervision.

At all times when open for business, a therapeutic massage establishment shall have upon the premises a licensed massage therapist who shall be available to supervise the operation of the establishment and assure that no violations of this Ordinance occurs.

Section 18. 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 Board upon request.

Section 19. Violation Penalties.

The violation of any provision of this article 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 Town may enjoin or abate any violation of this article by appropriate action, including but not limited to revocation of the license. The Town shall be entitled to recover its costs of any enforcement action, including its attorneys fees.

Section 20. Validity of Ordinance.

If any portion of this Ordinance is held to be invalid or unconstitutional by a Court of competent jurisdiction, then this shall not effect the validity of the remaining provisions of this Ordinance.

ATTEST:

Certified by:

A true copy of an ordinance entitled
"Town of Berwick Massage and ,
Sexual Contact Ordinance"
as certified to me by the Municipal
Officers of Berwick on May 31, 1994

Barbara M. Martin
Barbara M. Martin, Town Clerk

Samuel S. Mathews
Krist L. Bowler
Donald M. Dick
Wendy A. Wehler
