

## **ORDINANCE \_\_\_\_\_**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING AND REPLACING IN ITS ENTIRETY MESA CITY CODE TITLE 5, CHAPTER 12 ENTITLED “MESSAGE ESTABLISHMENT OPERATIONS”.**

**WHEREAS**, Title 5, Chapter 12 of the Mesa City Code entitled “Message Establishment Operations” governs the licensing of massage establishments in Mesa, AZ;

**WHEREAS**, the City Council was made aware of instances of unprofessional practices and unlawful activity on the part of certain elements of the massage establishment industry;

**WHEREAS**, to enhance the professionalism and integrity of the massage establishment industry, while reducing unprofessional practices and unlawful activities, the City Council has determined revising and strengthening the language of Title 5, Chapter 12 of the Mesa City Code is necessary; and

**WHEREAS**, revising and strengthening the language clarifies the rights and responsibilities of massage establishment licensees while continuing to protect the health and safety of the public.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:**

SECTION 1. Mesa City Code Title 5, Chapter 12 entitled “Message Establishment Operations” is repealed in its entirety and replaced with the following language:

## **CHAPTER 12**

### **MESSAGE ESTABLISHMENT OPERATIONS**

#### **SECTION:**

- 5-12-1: PURPOSE; DEFINITIONS**
- 5-12-2: ADMINISTRATION; BUSINESS LICENSING AND REVENUE COLLECTIONS  
ADMINISTRATOR; DUTIES; APPEALS**
- 5-12-3: NEW LICENSE APPLICATION; FEE**
- 5-12-4: MESSAGE THERAPISTS; LICENSING OF MESSAGE ESTABLISHMENTS  
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- 5-12-5: MESSAGE ESTABLISHMENT LICENSE APPLICATION; CONTENTS;  
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- 5-12-6: INFORMATION UPDATE**
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<b>5-12-16:</b>	<b>CRIMINAL VIOLATIONS</b>
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<b>5-12-19:</b>	<b>APPLICATION AFTER DENIAL OR REVOCATION OF LICENSE</b>
<b>5-12-20:</b>	<b>EXEMPTIONS</b>
<b>5-12-21:</b>	<b>LICENSES; CUMULATIVE REGULATION</b>

**5-12-1: PURPOSE; DEFINITIONS:**

(A) The purpose of this Chapter is to:

- (1) Enhance the professionalism of the massage service industry, to protect the health and safety of the public by requiring massage therapists to have thorough knowledge of anatomy, physiology and an understanding of the relationship between the structure and the functions of the tissues being treated; and
- (2) Assure the integrity of the massage service industry by reducing unprofessional and unlawful practices.

(B) The below words and phrases, wherever used in this Chapter, shall be construed as defined in Section 5-12-1 unless, from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- (1) **APPLICANT:** A person who applies for a massage establishment license who, upon approval of the application, will be the licensee.
- (2) **CITY:** The City of Mesa, Arizona.
- (3) **CLIENT:** An individual who enters into an agreement for massage therapy for a fee, income or compensation of any kind within the City.
- (4) **CONTROLLING PERSON:** Means (A) any individual who has a ten percent (10%) or greater interest in the ownership or the earnings of the business and (B) any of the following persons for a licensee/applicant:
  - (a) The president or other executive officers of a corporation;
  - (b) Each general partner of a limited partnership or any partner of a non-limited partnership;
  - (c) The managing members or officers of a limited liability company/corporation; or
  - (d) A sole proprietor.
- (5) **DESIGNATED AGENT:** The individual designated by the applicant who will be the responsible party to receive City notices pursuant to this Chapter. If an applicant is an

individual (natural person) the applicant may name themselves as the designated agent.

- (6) **EMPLOY:** To hire, engage, or authorize the services of any individual on a full-time, part-time, or contract basis, without regard to compensation, whether or not the person employed, hired or engaged is denominated an employee or independent contractor.
- (7) **EMPLOYEE:** Any person who performs any service at a massage facility on a full-time, part-time or contract basis, whether or not the person is designated an employee or independent contractor. Employee does not include a person exclusively at the massage facility for repair or maintenance of the massage facility or for the delivery of goods to the licensee.
- (8) **HEARING OFFICER:** The Business Services Department Director or his/her designee.
- (9) **KNOWINGLY:** With respect to conduct or a circumstance described herein, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.
- (10) **LICENSE:** A license issued pursuant to this Chapter.
- (11) **LICENSEE:** The person who receives a massage establishment license, and in whose name a license has been issued by the Licensing Office pursuant to this Chapter.
- (12) **LICENSING OFFICE:** The division of the City's Business Services Department under the supervision of the City's Business Licensing and Revenue Collections Administrator.
- (13) **MESSAGE ESTABLISHMENT:** Any place of business or establishment wherein any of the subjects or methods of treatment listed in Section 5-12-1(B)(14) or Section 5-12-1(B)(16) are administered, practiced or used, or from which is dispatched a person for the purpose of administering, practicing or using any of the subjects or methods of treatment listed in Section 5-12-1(B)(14) or Section 5-12-1(B)(16).
- (14) **MESSAGE OR TOUCHING TECHNIQUES:** Any of the following named subjects and methods of treatment intended for use upon or in connection with the human body: oil rubs; alcohol rubs; salt glows; hot or cold packs; tub, shower, table or cabinet baths; herbal wraps; and touching procedures upon the external parts of the body by use of the hands, forearms, elbows, knees or feet, or by any electrical, mechanical or vibratory apparatus, including stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage and tapotement.
- (15) **MESSAGE THERAPIST:** A person who is licensed pursuant to Chapter 42 of Title 32 of the Arizona Revised Statutes to engage in the practice of massage therapy.
- (16) **MESSAGE THERAPY:** Includes any of the following that are undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement, or provide general or specific therapeutic benefits, including, but not limited to, stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage, tapotement, and any other non-incidental touching such as:

- (a) The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head.
- (b) The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees or feet or handheld mechanical, electrical, water or vibratory devices.
- (c) Any combination of range of motion, directed, assisted or passive movements of the joints.
- (d) Hydrotherapy, including, but not limited to, tub, shower or cabinet baths, and the application of water, hot and cold packs or wraps.
- (e) Any other therapeutic application of wraps, oils, alcohol rubs, skin brushing, salt glows and similar applications of products to the skin.

The following techniques and procedures are beyond the scope of a license issued pursuant to this Chapter: diagnosis, prescription of medicines or drugs, administering of injections, colon irrigation, performing minor surgery, and administering cranial, costal, or spinal adjustments as taught in medical, osteopathic, or chiropractic colleges. (Costal or spinal massage is permissible with a massage therapy license.)

- (17) **PERSON:** A corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual. It includes a trustee, receiver, an assignee, or similar representative.
- (18) **POLICE DEPARTMENT:** The City of Mesa Police Department. The Chief of Police refers to the Chief of the Mesa Police Department or his designee.
- (19) **PRIVATE ANATOMICAL AREAS:** The genitals, perineum, and anal region of any person and the area of the breast that includes the areola and the nipple of any female person.
- (20) **RESPONSIBLE PARTY:** Any person who violates a provision of this Chapter subject to a civil violation as set forth in Section 5-12-17.
- (21) **SCHEDULE OF FEES AND CHARGES:** The then current adopted City of Mesa Schedule of Fees and Charges.

**5-12-2: ADMINISTRATION; BUSINESS LICENSING AND REVENUE COLLECTIONS ADMINISTRATOR; DUTIES, APPEALS:**

- (A) It shall be the duty and responsibility of the Business Licensing and Revenue Collections Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing and Revenue Collections Administrator or his/her designee shall issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter.

- (B) Any party aggrieved by a decision of the Business Licensing and Revenue Collections Administrator or his/her designee under this Chapter may appeal within ten (10) calendar days after being sent notice of such decision by mail. The appeal shall be in writing, shall state the grounds for the appeal, and shall be sent to the Business Services Director. The Business Services Director, or a designated representative, shall schedule a hearing with a Hearing Officer within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. A hearing under Section 5-12-2(B) will occur in the same manner as set forth in Section 5-12-17 below.

**5-12-3: NEW LICENSE APPLICATION; FEE:**

- (A) Any person desiring to obtain a license shall apply to the Licensing Office, who shall refer such application to the Chief of Police or his/her designated representative for appropriate investigation. Each application shall be accompanied by the fee required in accordance with the Schedule of Fees and Charges.
- (B) Upon approval, and prior to the issuance of a license, the applicant shall pay a first year license fee in accordance with the Schedule of Fees and Charges.

**5-12-4: MESSAGE THERAPISTS; LICENSING OF MESSAGE ESTABLISHMENTS REQUIRED; EXCLUSIONS.**

- (A) A person desiring to practice or in any manner to claim to practice massage therapy must first obtain and maintain in effect a current, unrevoked and unsuspended massage therapist license as required by Arizona Revised Statutes and as required by this Chapter.
- (B) A person desiring to conduct or operate a massage establishment must first obtain and maintain in effect an unrevoked and unsuspended massage establishment license as required by this Chapter.
- (C) Any person licensed as provided in this Chapter must operate under the name or conduct business under the designation specified in such license.
- (D) Any massage establishment licensed as provided in this Chapter must only conduct business at the location(s) specified in such license.
- (E) The provisions of Section 5-12-4(B) shall not apply to a place of business or establishment wherein all persons offering massage or touching techniques or massage therapy are licensed as a barber, aesthetician, cosmetologist, or nail technician pursuant to Arizona Revised Statutes, and who practice within the scope of that person's license.

**5-12-5: MESSAGE ESTABLISHMENT LICENSE APPLICATION; CONTENTS; BUSINESS HOURS:**

Each application for a license shall consist of the information set forth in this Section 5-12-5. Each applicant must provide the required information applicable to the applicant in order for a license to be processed.

- (1) Applicant's full legal name, business name, business phone number, legal form of applicant, current residential phone number, and current residence or legal address of the applicant.

- (2) If applicant is a natural person or sole proprietorship, applicant's physical description, and date and place of birth.
- (3) Any other names by which the applicant is or has been known.
- (4) The address at which the applicant desires to do business.
- (5) The mailing address for the purpose of receiving City notices and other licensing correspondence relating to the applicant, the licensee, or the enforcement of this Chapter.
- (6) Business hours of the massage establishment. The business hours submitted pursuant to this Chapter must be in accordance with Section 5-12-8(P).
- (7) If applicant is a natural person or sole proprietorship, applicant's addresses of primary residence and the dates of residence at each address for the ten (10) year period immediately preceding the date of the application.
- (8) The name of the designated agent. The designated agent must be able to receive correspondence at the address set forth in Section 5-12-5(5) above.
- (9) The name of all controlling persons for the applicant.
- (10) If applicant is a natural person or sole proprietorship, applicant's business, occupation, and employment history for the ten (10) year period immediately preceding the date of the application, including addresses and dates of employment.
- (11) If applicant is a natural person or sole proprietorship, a current driver's license with picture or other current picture identification document issued by a governmental agency, demonstrating applicant has reached the age of eighteen (18) years.
- (12) The business license history of the applicant: whether the applicant, while operating under a business license issued by a governmental jurisdiction, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation.
- (13) Applicant's felony and misdemeanor convictions for the ten (10) year period immediately preceding the date of application, excluding those for civil traffic offenses, and the grounds for such convictions.
- (14) The Articles of Incorporation, Articles of Organization, or Certificate of Limited Partnership, together with any amendments thereto, for an applicant that is a business entity.
- (15) A schedule (list) of services to be offered at the massage establishment.
- (16) A clearly legible sketch or diagram showing the configuration of the overall business premises of the massage establishment that includes, at a minimum, all of the following:
  - (a) The location of all interior doors, walls, curtains and room dividers.
  - (b) A description of the use of each interior space or room, including a designation, by type

of use, of each room or space available for massage or touching techniques or massage therapy by a massage therapist.

- (c) A designation of each room or space that is being, or is intended to be, leased, subleased, or licensed for use by any person other than the applicant and a description of its intended and actual use.

The sketch or diagram need not be professionally prepared, but shall be drawn on one (1) page measuring 8 ½ inches by 11 inches with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. For purposes of this Section 5-12-5(16) a “wall” shall include any interior barrier, including transparent glass, which extends more than fifty-four (54) inches from the level of the finished floor.

- (17) Such other identification and information as the Licensing Office may require.

#### **5-12-6: INFORMATION UPDATE:**

Except as otherwise provided herein, any change in the information required to be submitted by this Chapter shall be submitted to the Licensing Office on the form prescribed by the Licensing Office for that purpose.

#### **5-12-7: LICENSE APPLICATION INVESTIGATION:**

- (A) Any applicant for a license shall present the completed application to the Licensing Office containing all of the information requested on the application and corresponding documents as prescribed in this Chapter.
- (B) Each person applying for a license shall submit a full set of fingerprints to the City in a manner approved by the Licensing Office, including fingerprints for all controlling persons. The fingerprints will be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation.
- (C) The Police Department, on behalf of the Licensing Office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data, of license applicants and controlling persons for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information shall be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension or revocation of a license.
- (D) The Police Department shall have a reasonable time within which to investigate the application and background of the applicant and controlling persons. Based on such investigation, the Police Department shall recommend to the Licensing Office approval or denial of the license in accordance with this Chapter.

#### **5-12-8: MASSAGE ESTABLISHMENT LICENSE; SPECIAL REQUIREMENTS:**

- (A) No license shall be issued: (i) if the applicant or a controlling person has been convicted during

the ten (10) year period immediately preceding the date of application of any felony or misdemeanor offense having a reasonable relationship to a massage establishment; (ii) if the application was falsified; (iii) if the applicant or a controlling person has an outstanding warrant for his or her arrest; or (iv) if the applicant or a controlling person is not in compliance with any provision of this Chapter.

- (B) No license shall be issued if the applicant or controlling person was convicted during the ten (10) year period immediately preceding the date of the application of any offense: (i) prescribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code (Title 13, Arizona Revised Statutes); (ii) prescribed by Mesa City Code, Title 6, Police Regulations; or (iii) any offense committed outside this state or City that, if committed in this state or City, would constitute a violation of any offense prescribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code or Title 6 of the Mesa City Code.
- (C) No license shall be issued if the applicant or controlling person has any felony or misdemeanor charge pending in a court of competent jurisdiction having a reasonable relationship to the functions of a massage establishment. A renewal license may be issued if the licensee or controlling person has a felony or misdemeanor charge pending in a court of competent jurisdiction having a reasonable relationship to the functions of a massage establishment; however, the issuance of such renewal license shall not prevent the City from taking any action prescribed in this Chapter against the licensee should the licensee or controlling person be convicted of the pending charge.
- (D) An applicant for a license, a controlling person for a licensee, or a licensee shall permit representatives of the Police Department, and any other federal, state, county, or local agency in the performance of any function connected with the enforcement of any code, statute or regulation relating to human health, safety or welfare or structural safety, normally and regularly conducted by such agency, to inspect the premises of a massage establishment for the purpose of ensuring compliance with the law, at any time it is lawfully occupied or open for business. Inspection of rooms occupied by a patron shall not commence until the patron has been given reasonable opportunity to dress, gather his or her personal effects, and exit the room. Personal effects of a patron shall stay in the room within eyesight of the patron or, at the patron's request, shall be placed in a locker to which the patron has the key.
- (E) A licensee shall comply with the following requirements at all times:
  - (1) A readable sign shall be permanently affixed to or immediately next to the main entrance of the massage establishment and shall identify the licensee's trade name or business name as it appeared on the license application.
  - (2) Lighting of ten (10) foot candles, measured at a height of thirty (30) inches at the approximate center of the room or enclosure, shall be provided in each room or enclosure where services are performed on patrons.
  - (3) Ventilation shall be provided in accordance with Title 4 of the Mesa City Code.
  - (4) Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any of the subjects or methods of treatment listed in Section 5-12-1(B)(14) or (B)(16).



- (5) Hot and cold running water, tempered by means of a mixing valve faucet, shall be provided at all times.
- (6) Closed cabinets shall be provided and used for the storage of clean linens.
- (7) Notwithstanding any other requirement of this Chapter, a minimum of one (1) shower or tub shall be provided for any establishment offering any hydrotherapy services including whirlpool baths, saunas, steam baths, and herbal wraps.
- (8) Any pool or spa shall be issued a permit and inspected as required by Title 4 of the Mesa City Code or Maricopa County Code, as applicable.
- (9) All walls, ceilings, floors, showers, bathtubs, steam rooms, and all other physical facilities within the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilets and wash basins shall be thoroughly cleaned each day business is in operation. Shower compartments and bathtubs, where provided, shall be thoroughly cleaned after each use.
- (10) Clean and sanitary sheets and towels shall be provided for each patron of the establishment. The head rest of each table shall be provided with a clean and sanitary covering for each patron.
- (11) All wash basins within an establishment shall: (i) have hot and cold running water, tempered by means of a mixing valve faucet; (ii) provide sanitary towels placed in permanently installed dispensers or upon a permanently attached roll dispenser; and (iii) provide soap in a soap dispenser that is placed on or near the wash basin. A hand wash basin shall be provided in each treatment room providing hydrotherapy services, including whirlpool baths, saunas, steam baths and herbal wraps.
- (12) A massage establishment shall not have any entrance or exit way providing a direct passageway to any type of sleeping or living quarters.
- (13) A massage establishment must have a public entrance door or a window made of glass or transparent material with an unobstructed line of sight connected to the sales transaction area of the massage establishment, unless the establishment has no doors or windows on the exterior of the building in which the massage establishment is located. The line of sight may not be obstructed by any means including, but not limited to, the use of furnishings, window dressing, plywood, paper, or other opaque materials.
  - (a) The unobstructed line of sight must permit a view of and from the sales transaction area through all exterior windows and public entrance and exit doors located in the sales transaction area.
  - (b) The unobstructed line of sight must, at a minimum, extend from four (4) feet above the ground to at least seven (7) feet above the ground.
  - (c) Any substance or material in conjunction with glazing material (i.e. window tint) placed on a transparent door or window required under Section 5-12-8(E)(13) to be unobstructed must have a light transmission of more than thirty-three percent (33%) plus or minus three percent (3%) and a luminous reflectance no greater

than thirty-five percent (35%) plus or minus three percent (3%).

- (d) The requirements set forth in Section 5-12-8(E)(13) do not apply to doors and windows within a massage establishment adjoining rooms where massage therapy is performed.
  - (e) A licensee does not have to meet the requirements of Section 5-12-8(E)(13) if the licensee:
    - (i) Operates a massage establishment in which the licensee is the only massage therapist performing massage therapy at the massage establishment; and
    - (ii) The massage establishment consists of only one (1) room, not including any shower/bathing or bathroom facilities, as demonstrated in the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-(5)(16).
- (F) The name of any person provided to the Licensing Office pursuant to Section 5-12-8(O) whose employment at the massage establishment has terminated shall be reported to the Licensing Office, on the form prescribed by the Licensing Office for that purpose, within ten (10) calendar days after termination.
- (G) An applicant and licensee shall be in compliance with Titles 4, 11, and 7 of the Mesa City Code.
- (H) Notwithstanding any other provision of this Chapter, the Business Licensing and Revenue Collections Administrator or his/her designee may, in his or her discretion, delay the granting or denial of a license, upon the submission of a complete application, for a period of up to ninety (90) calendar days if there exists, or did exist within the sixty (60) calendar day period immediately prior to the date the application was first submitted, an active massage establishment license at the location for which the application was submitted and there also exists a Police Department report documenting a violation of this Chapter at that establishment or a criminal prosecution involving the existing establishment relating to compliance with any of the provisions of this Chapter or applicable state law. For purposes of this Section 5-12-8(H), an active massage establishment license includes a license that has been suspended or revoked, provided that a revoked license is no longer active after passage of the period of time for appeal with no appeal taken or, in the event an appeal is taken, after the Hearing Officer has rendered a decision and the decision is in the City's favor. Notwithstanding any other provision of this Section 5-12-8(H), any license subject to a judicial stay or injunction is an active license.
- (I) The applicant for a license for a location at which a massage establishment license was revoked or suspended within the previous six (6) months shall provide to the Licensing Office a sworn statement, in a form prescribed by the Licensing Office, verifying that no person who would be deemed a controlling person for the massage establishment whose license was revoked or suspended is involved in the ownership, control or management of the applicant. The Licensing Office may also request such documents as are reasonably believed necessary to verify any of the information in the sworn statement. The failure to provide this sworn statement or supporting information shall be cause for denial of the license application.
- (J) A license shall not be issued for a physical space at which a licensed massage establishment is in

operation. For purposes of this Section 5-12-8(J), there shall be a rebuttable presumption that a location with an active license has a massage establishment in operation. Section 5-12-8(J) shall not preclude a new applicant from initiating the application process for a physical space at which a licensed massage establishment is in operation however a license shall not be issued to a new licensee meeting the requirements of this Chapter until the previous license is surrendered, expired, or revoked.

- (K) Any massage establishment application that is not in full compliance with this Chapter sixty (60) calendar days after initial filing of the application shall be denied, provided the Licensing Office may grant an additional period of up to ninety (90) calendar days upon written request of the applicant, prior to the expiration of the sixty-day period, if applicant demonstrates the occurrence of circumstances that were beyond the applicant's control or other, similar good cause. Nothing in this Section 5-12-8(K) shall be construed to prevent the Licensing Office from denying a license as soon as a legal basis exists to do so.
- (L) A licensee shall not operate under any name or conduct business under any designation not specified in such license and the application submitted for such license.
- (M) A licensee shall not conduct business at any location not specified on such license.
- (N) A licensee shall not implement changes in the services offered by a massage establishment, change the use or configuration of the premises of the massage establishment, change the designated agent, or change the business hours of the massage establishment without providing written notice to the Licensing Office and receiving written approval or written acknowledgement from the Licensing Office of such change.
- (O) A licensee shall not employ a massage therapist whose true name and Arizona state-issued massage therapist license number has not previously been provided to the Licensing Office on the form prescribed by the Licensing Office for that purpose.
- (P) No massage establishment shall remain open for business, provide massage therapy services, dispatch massage therapists, or permit massage therapists to work off the premises on behalf of the massage establishment at any time between the hours of 10:00 P.M. to 6:00 A.M. Clients cannot be on the premises of the massage establishment after 10:30 P.M. All massage therapy must be concluded by 10:00 P.M., however other business activities related to the massage establishment may continue until 10:30 P.M. A massage establishment may only be open for business during hours that have been approved by the Licensing Office as required by this Chapter.
- (Q) The ownership or control of the licensee shall not change during the term of the license such that a person, other than those listed on the application, would be deemed a controlling person for the licensee and either: (i) the new controlling person was not reported to the Licensing Office within ten (10) calendar days after he/she became a controlling person; or (ii) the new controlling person fails to meet the requirements that must be met by a controlling person as set forth in this Chapter.
- (R) The licensee must maintain in the records of the Licensing Office, the name of an individual as a designated agent.

**5-12-9: APPLICATIONS; ADDITIONAL REQUIREMENTS:**

Every license shall be issued in accordance with applicable law including, but not limited to, A.R.S. § 41-1080. No license shall be issued to an individual if the individual does not present one or more of the documents listed in A.R.S. § 41-1080, indicating the individual's presence in the United States is authorized under federal law and complies with the Arizona Legal Workers Act.

**5-12-10: DISPLAY OF LICENSE; IDENTIFICATION; RETENTION AND INSPECTION OF RECORDS:**

- (A) A licensee shall post their license in a conspicuous place upon the business premises of the massage establishment in a location that is clearly visible to the general public upon entry into the business. Every on duty person to whom an Arizona state-issued massage therapist license has been granted shall: (i) display the license or a clearly legible copy of the license in a conspicuous place upon the business premises in which they perform massage therapy that is clearly visible to the general public upon entry to the business; or (ii) maintain the license or a clearly legible copy of the license inside the massage establishment in a manner that allows for the license to be made readily available for inspection by the general public. The massage establishment licensee is responsible for ensuring all state-issued massage therapist licenses are properly displayed and current for any persons performing massage therapy on the premises of the massage establishment.
- (B) A licensee shall maintain on the business premises of a massage establishment all of the following records for each massage therapist employed at the massage establishment from the day of first employment through a period of ninety (90) calendar days after the date of last employment:
  - (1) A copy of the state-issued massage therapist license.
  - (2) A copy of a government issued identification document with photo of the massage therapist. The copy of the government issued identification must clearly depict the photo of the individual and all information must be legible.
- (C) A licensee shall maintain on the business premises of a massage establishment a copy of the most recent sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16).
- (D) A licensee or employee of a massage establishment shall make the records required to be maintained by Section 5-12-10 available for inspection upon demand by any law enforcement officer or City regulatory license inspection official during any period of time that the massage establishment is open to the public or lawfully occupied.

**5-12-11: REQUIRED LOGS:**

A licensee shall ensure a log is maintained at the massage establishment of all massage therapy administered. The log shall contain the following information: date, time, therapist name, type of each massage therapy administered, and the address where each massage therapy was administered. The log shall be retained for a minimum of one (1) year following any massage therapy. The massage therapy log shall be subject to inspection upon request by an agent or representative of the City. The inspection of the massage therapy log will occur at the Police Department or other mutually agreeable location.

**5-12-12: CHANGE OF LOCATION:**

A change of location of a massage establishment shall be approved by the Licensing Office, provided that the licensee is in compliance with all City ordinances and regulations, completes the appropriate location change application, and submits a fee in accordance with the Schedule of Fees and Charges. Notwithstanding any other provision of this Chapter, no massage establishment shall be operated or maintained at a location until approved by the Licensing Office and the establishment has a current unsuspended and unrevoked license with the correct name and address posted in a conspicuous place in the establishment as required in Section 5-12-10.

**5-12-13: NON-TRANSFERABILITY OF LICENSE:**

Licenses issued pursuant to this Chapter are non-transferable; upon the sale or transfer of a massage establishment from person to person, the establishment license shall become null and void.

**5-12-14: TERM OF LICENSE; LICENSE RENEWAL:**

- (A) Any license issued pursuant to this Chapter shall be valid for a term of one (1) year from the date of issuance. Any license issued pursuant to this Chapter, unless revoked, may be renewed by a licensee in accordance with this Chapter and such renewal shall be valid for a term of one (1) year. The completed renewal application must be submitted by the licensee no later than forty-five (45) calendar days prior to the expiration of the license along with the applicable renewal fee as set forth in the Schedule of Fees and Charges. In addition, a current listing of massage therapists working at the establishment, including corresponding state-issued license numbers and dates of expiration, must be submitted with the renewal application. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed.
- (B) If a licensee fails to submit a complete renewal application with the applicable fee at least forty-five (45) calendar days prior to the expiration of the term of the license, the license shall expire at the end of the term of the license and will be deemed non-renewable. Licensees who fail to apply to renew their license, who wish to continue operating a massage establishment, must file a new application for license and may not operate a massage establishment until a new license has been issued.

**5-12-15: FEES:**

All fees are nonrefundable, are not prorated, and are set forth in the Schedule of Fees and Charges.

**5-12-16: CRIMINAL VIOLATIONS:**

- (A) It is unlawful:
  - (1) For any person to knowingly conduct or operate a massage establishment on the same business premises, as established under Section 5-12-5(16), whereon is also conducted or operated a sexually oriented business (as defined in Title 6 of the Mesa City Code), bar, cocktail lounge, photography studio, model studio, art studio, motion picture studio/theater, or telephone answering service.

- (2) For any person to fail or refuse to permit a lawful inspection authorized by this Chapter immediately upon request. Inspection of rooms occupied by a patron shall not commence until the patron has been given reasonable opportunity to dress, gather his or her personal effects and exit the room.
- (3) For any person to conduct massage therapy behind a locked door. It is not a violation of Section 5-12-16(A)(3) for a licensee to perform massage therapy behind a locked door if the licensee either:
  - (a) Utilizes a locking system approved in writing by the Police Department which provides the Police Department with the ability to unlock the doors during regular business hours of the massage establishment for the purpose of conducting a lawful inspection authorized by this Chapter.
  - (b) Meets both of the following requirements:
    - (i) Operates a massage establishment in which the licensee is the only massage therapist performing massage therapy at the massage establishment; and
    - (ii) The massage establishment consists of only one room, not including any shower/bathing or bathroom facilities, as demonstrated in the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16).
- (4) For any person to administer massage therapy for a gratuity or compensation of any kind to a person whose genital organs or anus are not covered by opaque material.
- (5) For any person, while on the premises of a massage establishment, to knowingly provide or offer to provide any service:
  - (a) In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires.
  - (b) In such a manner that the person touches the private anatomical areas of the individual receiving the treatment.
  - (c) While the person providing the treatment is clothed in a manner that fails to cover his or her private anatomical areas with an opaque material.
- (6) For any person on the premises of a massage establishment to intentionally view a completely or partially disrobed massage establishment client if the viewing is not related to treatment under current practice standards and is intended to appeal to the prurient interest of the massage therapist or the massage establishment client.
- (7) For any person, while on the premises of a massage establishment, to knowingly ask or direct a person to:
  - (a) Touch his or her own anus, genitals or breasts;
  - (b) Touch the anus, genitals or breasts of any person on the premises.; or

- (c) Expose his or her genitals, anus or breasts to any person on the premises with the intention of appealing to the prurient interest of the massage therapist or the massage establishment client.
- (8) For any person, while on the premises of a massage establishment, to knowingly place any part of the body of a patron in direct or indirect contact with the anus, genitals or breasts of any other person on the premises.
- (9) For any person to knowingly operate or maintain a massage establishment at a location that has not been licensed by the Licensing Office.
- (10) For any applicant for a license or renewal to fail to disclose all controlling persons on an application or, in the event controlling person(s) changes, to update said information with the Licensing Office.
- (11) For any person to knowingly use a massage establishment as living or sleeping quarters.
- (12) For any person to practice or in any manner to claim to practice massage therapy without first obtaining and maintaining in effect a current, unrevoked and unsuspended massage therapist license as required by the Arizona Revised Statutes and this Chapter.
- (13) For any person to conduct or operate a massage establishment without first obtaining and maintaining in effect a current, unrevoked and unsuspended license as required by this Chapter. The provisions of Section 5-12-16(A)(13) shall not apply to a place of business or establishment wherein all persons offering massage or touching techniques or massage therapy are licensed as a barber, aesthetician, cosmetologist, or nail technician pursuant to Arizona Revised Statutes, and who practice within the scope of that person's license.
- (14) For any person to knowingly employ any other person to offer massage therapy who does not hold a current, unrevoked and unsuspended massage therapy license issued by the State of Arizona.
- (15) For any person to offer massage or touching techniques or massage therapy in any room or space of the business that has not been specifically identified as a room or space available for those services on the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16).
- (16) For any person to offer massage or touching techniques or massage therapy in a room or space designated as leased, subleased or licensed for use by any other person on the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5(16).
- (17) For any person to provide massage therapy services at a massage establishment or at any location on behalf of a massage establishment at any time between the hours of 10:00 P.M. to 6:00 A.M.
- (18) For any person to photograph a massage establishment client while the client is on the premises of a massage establishment and located within any treatment room, restroom, locker room or dressing room, without the express, written permission of that client. For purposes of Section 5-12-16(A)(18) the word "photographed" shall mean the use of any

electronic or mechanical device to record, reproduce or transmit an optical image.

- (19) A licensee shall not operate under any name or conduct business under any designation not specified in such license and the application submitted for such license.
- (B) For purposes of Section 5-12-16, the word *touch* shall include physical contact that occurs through clothing or by means of any object.
- (C) Whenever in this Chapter any act is declared to be unlawful, any person convicted of such a violation shall be guilty of a class one misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00), by imprisonment not to exceed six (6) months, or by both fine and imprisonment. Each day any such violation continues shall constitute a separate offense. Revocation or suspension of a license shall not be a defense against prosecution.

#### **5-12-17 CIVIL VIOLATIONS**

- (A) A violation of any of the following sections of this Chapter shall be a civil violation subject to the provisions of this Section 5-12-17:
  - (1) Section 5-12-8(E)(1) [signage];
  - (2) Section 5-12-8(E)(2) [lighting];
  - (3) Section 5-12-8(E)(3) [ventilation];
  - (4) Section 5-12-8(E)(4) [disinfecting and sterilizing equipment];
  - (5) Section 5-12-8(E)(5) [hot and cold running water];
  - (6) Section 5-12-8(E)(6) [linen storage];
  - (7) Section 5-12-8(E)(7) [shower or tub requirement];
  - (8) Section 5-12-8(E)(8) [pool or spa permit];
  - (9) Section 5-12-8(E)(9) [repair and maintenance of facility];
  - (10) Section 5-12-8(E)(10) [clean and sanitary sheets, towels, and head rest covering];
  - (11) Section 5-12-8(E)(11) [wash basins];
  - (12) Section 5-12-8(E)(13) [unobstructed line of sight];
  - (13) Section 5-12-8(F) [employee information provided to Licensing Office];
  - (14) Section 5-12-8(O) [employment of licensed massage therapists];



- (15) Section 5-12-10 [display of license; identification; retention and inspection of records];
  - (16) Section 5-12-11 [massage therapy log]; or
  - (17) Section 5-12-18(A)(1) [falsified application information].
- (B) Any responsible party, whether by admission, default, or after a hearing, is found responsible for a civil violation of this Chapter, shall pay a civil sanction of:
- (1) \$250 for the first violation in an eighteen (18) month period;
  - (2) \$500 for the second violation in an eighteen (18) month period; and
  - (3) \$750 for the third violation and each subsequent violation in an eighteen (18) month period.
  - (4) In applying the eighteen (18) month provision set forth in Section 5-12-17(B), the date of the commission of the offense shall be the determining factor.
- (C) Each day in which a civil violation set forth in Section 5-12-17 continues shall constitute a separate civil offense.
- (D) A civil action for violations of Section 5-12-17 may be commenced by issuance of a citation by any police officer or City employee designated by the City Manager. The citation will be substantially in the form established by the City Manager or designee. The citation shall be served pursuant to the Arizona Rules of Civil Procedure.
- (1) The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the Mesa City Code Section that was violated. The citation shall direct the responsible party to, within ten (10) calendar days of the issuance of the citation, pay the civil sanction or request a hearing before the Hearing Officer.
  - (2) The Hearing Officer may permit amendments to the citation to correct a technical defect made in good faith.
- (E) If the responsible party pays the civil sanction, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If a responsible party served with a civil citation fails to pay the civil sanction, request a hearing, or the request for hearing is denied in accordance with Section 5-12-17(F), the violation in the civil citation shall be deemed admitted and the civil sanction may be collected as any other civil judgment, fine or fee due and payable to the City.
- (F) Upon receipt of a citation for a civil sanction, a person may request a hearing. The request for hearing must meet the following requirements: (i) the request must be mailed to the Business Services Director and be postmarked no later than ten (10) calendar days after the issuance of the citation; and (ii) the request must set forth the grounds upon which the person is appealing the citation. Failure to meet the aforementioned requirements shall entitle the Business Services Director to deny the request for hearing.

- (G) All proceedings before a Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand.
- (H) If the City or responsible party is aggrieved by a decision of a Hearing Officer, the aggrieved party may file a complaint of special action in Superior Court to review the Hearing Officer's decision at any time within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the City and the responsible party, shall constitute a waiver of any right to judicial review.

**5-12-18: DENIAL, SUSPENSION, REVOCATION, NONRENEWAL OF LICENSE:**

- (A) In addition to any penalties set forth in this Chapter, an application for a license may be denied for any of the following reasons:
  - (1) Applicant submits an application with falsified information.
  - (2) Applicant fails to pay the required fee in accordance with the Schedule of Fees and Charges.
  - (3) Applicant or a controlling person for the applicant was convicted of a felony offense having a reasonable relationship to the functions of a massage establishment or a massage therapist during the ten (10) year period immediately preceding the date of application.
  - (4) Applicant or a controlling person for the applicant was convicted of untrue, fraudulent, misleading, or deceptive advertising during the ten (10) year period immediately preceding the date of application.
  - (5) Applicant or a controlling person for the applicant was engaged in the business of a massage therapist under a false or assumed name, or was found to be impersonating another therapist of a like or different name during the ten (10) year period immediately preceding application.
  - (6) Applicant or a controlling person for the applicant is currently in violation of this Chapter. Section 5-12-18(A)(6) shall apply regardless of the location at which the violation occurred.
  - (7) Any grounds for denial set forth in Sections 5-12-8(A), (B), (C), (I), (J), or (K) of this Chapter.
  - (8) Applicant failed to meet a requirement set forth in this Chapter or state law for the issuance of a license by the City.
- (B) In addition to any penalties set forth in this Chapter, a license renewal application may be denied for any of the following reasons:

- (1) For any of the grounds for denial set forth in Section 5-12-18(A) above.
  - (2) Applicant failed to submit the renewal application within the time frames prescribed by Section 5-12-14.
- (C) In addition to any penalties set forth in this Chapter, a license shall be suspended if during the term of the license:
- (1) Licensee or a controlling person for the licensee is convicted of a felony or misdemeanor criminal offense:
    - (a) Involving fraud in conducting the business of a massage establishment or of fraud or deceit in obtaining the license;
    - (b) Involving prostitution, indecent exposure, or pornography;
    - (c) Involving untrue, fraudulent, misleading, or deceptive advertising; or
    - (d) Having a reasonable relationship to the functions of a massage establishment or a massage.
  - (2) The application upon which the license was awarded was found to contain false or misleading information, or the applicant failed to meet any of the requirements for the issuance of a license set forth in this Chapter.
  - (3) Licensee or a controlling person for the licensee knows or should have known that prostitution, indecent exposure, or pornographic acts are occurring or have occurred in the operation of the licensed massage establishment.
  - (4) The licensee ceased to use the license for purposes of offering massage therapy. The failure to offer massage therapy at a massage establishment for thirty (30) consecutive calendar days shall create a rebuttable presumption that the licensee has ceased to use the license for purposes of offering massage therapy.
  - (5) If on two (2) or more occasions within an eighteen (18) month period, the licensee or a controlling person, employee, agent, representative or independent contractor of the licensee commits an offense on the premises of any massage establishment owned, controlled, or operated by the licensee or a controlling person:
    - (a) Prescribed by Chapters 14 (Sexual Offenses), 32 (Prostitution), and 35.1 (Sexual Exploitation of Children) of the Arizona Criminal Code (Title 13, Arizona Revised Statutes);
    - (b) Prescribed by Mesa City Code, Title 6, Police Regulations; or
    - (c) Outside this state or City that, if committed in this state or City, would constitute a violation of any offense prescribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code or Title 6 of the Mesa City Code.
    - (d) For the purpose of Section 5-12-18(C)(5):

- (i) A person will be deemed to have committed an offense upon conviction;
  - (ii) In applying the eighteen (18) month provision, the date of the commission of the offense shall be the determining factor; and
  - (iii) The two (2) or more offenses subjecting the license to suspension do not have to be: (i) violations of the same statute or ordinance so long as they are offenses of the type listed in Section 5-12-18(C)(5), and (ii) committed by the same person so long as they are committed by the licensee or a controlling person, employee, agent, representative or independent contractor of the licensee.
- (6) Licensee or a controlling person for the licensee is found to be a responsible party for a civil violation set forth in Section 5-12-17 through a hearing, default, or admittance.
- (7) The penalty for a suspension of any violation under Section 5-12-18(C) shall be:
  - (a) For the first suspension of a license during an eighteen (18) month period, the license will be suspended up to fourteen (14) calendar days.
  - (b) For the second suspension of a license during an eighteen (18) month period, the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days.
  - (c) For the third suspension of a license during an eighteen (18) month period, the license shall be revoked in accordance with Section 5-12-18(D).
- (D) In addition to any penalty for a violation set forth in this Chapter, a license shall be revoked if the license was suspended in accordance with this Chapter on three (3) or more occasions during an eighteen (18) month period.
- (E) Pursuant to Section 5-12-2, the Business Licensing and Revenue Collections Administrator or his/her designee has the authority to issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter. Any party aggrieved by a decision of the Business Licensing and Revenue Collections Administrator or his/her designee may appeal the decision by requesting a hearing within ten (10) days of receipt of notice of the Business Licensing and Revenue Collections Administrator or his/her designee.
  - (1) The request for hearing must meet the following requirements: (i) the request must be mailed to the Business Services Director and be postmarked no later than ten (10) calendar days after the issuance of the notice of the decision of the Business Licensing and Revenue Collections Administrator or his/her designee; and (ii) the request must set forth the grounds upon which the person is appealing the decision. Failure to meet the aforementioned requirements shall entitle the Business Services Director to deny the request for hearing.
  - (2) Any appeal hearing shall be subject to the rules set forth in Section 5-12-17(G). Any request for judicial review of a Hearing Officer's decision shall be subject to the rules set forth in Section 5-12-17(H).

- (3) The filing of an appeal will suspend the decision of the Business Licensing and Revenue Collections Administrator or his/her designee, or the Licensing Office until such time as the Hearing Officer has rendered their decision.

#### **5-12-19 APPLICATION AFTER DENIAL OR REVOCATION OF LICENSE:**

No person may apply for a license under this Chapter within one (1) year from the denial of an application for a massage establishment license to such applicant or from the revocation of a license issued pursuant to this Chapter.

#### **5-12-20: EXEMPTIONS**

The provisions of this Chapter shall not apply to:

- (1) Establishments whose employees are authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy, or acupuncture, and who practice within the scope of that person's license.
- (2) Establishments whose employees are acting as trainers for any bona fide amateur, semiprofessional, or professional athletic team or athlete.
- (3) Establishments whose employees are authorized by the laws of this state as barbers, cosmetologists, or aestheticians provided their activity is limited to the scope of their barber, cosmetology, or aesthetician license.
- (4) Establishments whose employees are providing colon irrigation only.
- (5) Businesses that are operating solely as a school approved by the Arizona State Board of Massage Therapy.

#### **5-12-21: LICENSES; CUMULATIVE REGULATION:**

- (A) The licenses required in this Chapter are in addition to any business or transaction privilege tax license required by the Mesa City Code or applicable law.
- (B) A state issued massage therapist license does not authorize one to operate a massage establishment in the City without first obtaining a license pursuant to this Chapter where applicable.
- (C) An applicant for a massage establishment license need not have a massage therapist license. However, massage establishments shall employ only Arizona state-licensed massage therapists to perform massage therapy.

**SECTION 2:** The recitals above are fully incorporated in this Ordinance by reference.

**SECTION 3:** The effective date of this Ordinance shall be thirty days following adoption by the Mesa City Council.

**SECTION 4:** This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

**SECTION 5:** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Council of the City of Mesa, Maricopa County, Arizona, this 18th day of May, 2015.

APPROVED:

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Mayor

ATTEST:

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City Clerk