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JAN 23 2014

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MEMORANDUM **Management Services Memo No. 14-038**

DATE: JANUARY 23, 2014

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER RD

FROM: DAWN LANG, MANAGEMENT SERVICES DIRECTOR DL

SUBJECT: INTRODUCTION AND TENTATIVE ADOPTION OF ORDINANCE NO. 4483 AMENDING SECTIONS 17-1 THROUGH 17-9, 17-12 THROUGH 17-14 AND 17-16 OF CHAPTER 17, CODE OF THE CITY OF CHANDLER, RELATING TO MASSAGE ESTABLISHMENTS.

RECOMMENDATION

Staff recommends Council introduce and tentatively adopt Ordinance No. 4483 amending Sections 17-1 through 17-9, 17-12 through 17-14 and 17-16 of Chapter 17, of the Code of the City of Chandler, relating to Massage Establishments.

BACKGROUND

A massage establishment is any place of business where any massage technique is administered, practiced or used. Chapter 17 of the Code of the City of Chandler sets permit, licensing, building, administrative, and moral conduct requirements for massage establishments and their personnel. Compliance to the Code requirements is determined through undercover operations by the Chandler Police Department and inspections by Tax and Licensing.

When a massage establishment is determined to be in violation of any section of the Civil Code, the massage establishment permit is revoked and the owner has 10 days to appeal the revocation. If the revocation is appealed, the massage establishment continues to operate and a hearing is held with the Management Services Director as the Hearing Officer. If the first appeal hearing upholds the revocation, the owner of the massage establishment has the ability for a second appeal to the City Manager or designee, all the while continuing to operate.

While the provisions of Chapter 17 were created to keep activities lawful in a business commonly susceptible to illegal behavior, certain provisions are being interpreted loosely and in need of clarification or revision. Through discussions between the City Manager's Office,

Management Services, Police and Law, the following substantive changes are included in this amendment, as well as some minor clarifications:

1) Employee definition added to clarify that any person who is performing massage techniques within the establishment (i.e. independent contractor or sub-lessee) is considered an employee for the purpose of Chapter 17.
2) Hearing Officer definition added to be City Manager or designee.
3) Section 17-2, Permit and license requirements clarified (i.e. must be displayed in an area visible to all who enter premise).
4) Section 17-3, New permit application information required clarified (i.e. list/log of all to be employed at establishment and updates to log). Requires more information on entities applying for a permit.
5) Section 17-7, Required logs clarified information to be included on employee and customer logs (i.e. legal name, State of Arizona massage license number, legal name of masseuse, full name of client, etc.).
6) Section 17-9, Change in business name clarified to require notification of changes made to the business or doing business as (dba) name.
7) Section 17-13, Denial of application, termination of permit; grounds; hearing; appeal changes include ability to appeal once instead of twice, added a time frame (30 business days from the receipt of request) that the hearing should take place and the decision of the Hearing Officer shall be final.

The proposed changes included in this amendment will allow reputable massage establishments to continue to operate as they always have in the City of Chandler, with the intent of minimizing the type of behavior meant to be curtailed by Chapter 17 of the Chandler City Code.

Following Council's approval, notification of the changes will be sent to all massage establishment permit holders and will include information on a class that will be available as a refresher as well as provide assistance in understanding the requirements and responsibilities of a massage establishment permit.

FINANCIAL IMPLICATION
None

PROPOSED MOTION
Move for the introduction and tentative adoption of Ordinance No. 4483 amending Sections 17-1 through 17-9, 17-12 through 17-14 and 17-16 of Chapter 17, of the Code of the City of Chandler, relating to Massage Establishments.

Attachment: Ordinance No. 4483

c: Pat McDermott, Assistant City Manager
Marsha Reed, Assistant City Manager

ORDINANCE NO. 4483

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTIONS 17-1, 17-2, 17-3, 17-7, 17-9, AND 17-13 OF CHAPTER 17, CODE OF THE CITY OF CHANDLER, RELATING TO MASSAGE ESTABLISHMENTS.

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, that the Code of the City of Chandler is hereby amended as follows:

SECTION I: That Section 17-1 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them in this section:

Director. The City's Management Services Director or designee.

Employee. Any person who performs any service at a massage establishment on a full-time, part-time or contract basis, whether or not the person is designated an employee, independent contractor or sub-lessee of massage establishment. Employee does not include a person exclusively at the massage establishment for repair or maintenance of the massage establishment or for the delivery of goods to the licensee.

Employee Log. The log generated and maintained in accordance with Sub-section 17-3.4 and 17-7.1.

Hearing Officer. City Manager or designee.

Massage establishment. Any place of business or ~~establishment~~ facility wherein any massage techniques as defined below are administered, practiced or used.

Massage techniques. The therapeutic manipulation of the human body through the skillful application of varied movements of the hands and fingers of the therapist upon the muscles and other soft tissues of the external parts of the body including effleurage, petrissage, tapotement, friction, vibration, rolling, oil rubs, salt glows, alcohol rubs, and the rotation, circumduction, flexion and extension of the extremities. Massage techniques also include hydrotherapy, consisting of tub, shower or cabinet baths, hot and cold packs, and adjunctive therapies, including the use of electrical devices such as heat lamps and vibrators which have been approved by the American Massage Therapy Association, and methodical pressure. All massage techniques are to be applied to external parts of the body only.

Massage therapist. A person who has completed a required course of study in a ~~recognized~~ school of massage therapy as recognized by the Arizona Revised Statutes (A.R.S. Title 32, Chapter 42) and who practices and administers any or all massage techniques described in this chapter for a fee or income of any kind in the City.

Moral turpitude. Any act or behavior that gravely violates moral sentiment or the accepted moral standards of the community.

SECTION II: That Section 17-2 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-2. Permit and license requirmentsed.

17-2.1. No person, as defined in this Code, Chapter 1, Section 1-2, ~~association, firm or corporation~~ shall conduct or operate a massage establishment without ~~first obtaining and maintaining in effect~~ a current massage establishment permit as required by this chapter.

17-2.2. No person shall practice or administer any massage techniques, whether for a fee or gratuity, without ~~first obtaining and maintaining in effect~~ a current massage therapist license~~permit~~ as required by A.R.S. Title 32, Chapter 42 ~~A.R.S~~. The massage therapist license, or copy thereof, shall be displayed in a manner visible to all who enter the premises when the therapist practices or administers any massage teniques for a fee or gratuity.

17-2.3. No person, as defined in this Code, Chapter 1, Section 1-2, ~~association, firm or corporation~~ shall employ as a massage therapist any person who does not hold a current unrevoked and unsuspended massage therapist license~~permit~~ as required by A.R.S. Title 32, Chapter 42~~, A.R.S~~, and whose true name and massage therapist license~~permit~~ number has not been previously provided to the Director, per Ssubsection 17-7 and 17-9(B).

17-2.4. The permit and licenses required by this article are~~is~~ in addition to any other applicable licenses or permits required by the city, county, or state. Persons and massage establishments permitted under this article shall comply with all other applicable ordinances and laws, including the City zoning ordinance.

SECTION III: That Section 17-3 of Chapter 17, Code of the City of Chandler is hereby Amended as follows:

17-3. New Permit Application; Fees.

17-3.1. Any person, as defined in this Code, Chapter 1, Section 1-2,~~association, firm or corporation~~ desiring to obtain a massage establishment permit shall make application for same to the Director, who shall refer such application to the Chief of Police for appropriate investigation. The Director shall have sixty (60) days from the date of the completion of all application materials and requirements to either issue or deny any permit subject to this article.

17-3.2. The application shall be accompanied by a nonrefundable application fee and an annual permit fee, established by Council resolution. ~~The annual permit fee will be refunded if the permit is denied. T~~ If the permit is denied, the ~~initial~~paid annual permit fee shall be ~~prorated and~~ refunded. The following table reflects how the annual permit fee is paid: ~~as follows:~~

January 1 — March 31	100% of annual permit fee

April 1 — June 30	75% of annual permit fee
July 1 — September 30	50% of annual permit fee
October 1 — December 31	25% of annual permit fee

17-3.3. The applicant shall pay a fee, established by Council resolution, to cover the cost of federal fingerprint processing or federal criminal history record information checks.

17-3.4. Information required. An applicant for a massage establishment permit shall submit the following on a form prescribed by the Director:

A. The full legal name and current residence address of the applicant.

B. If the applicant is a corporation, partnership or other business entity, the name of the entity shall be set forth exactly as shown in its organizational documents, together with the state and date of creation. If the entity was not formed in Arizona, it shall show proof that it has been authorized to do business in Arizona in accordance with all applicable laws. The applicant entity, by appropriate resolution of the entity during a duly conducted meeting of its managing body, shall designate one (1) of its officers or general partners to act as its responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this chapter.

C. Any other names by which the applicant has been known during the previous five (5) years.

D. The two (2) residence addresses immediately prior to the present address of the applicant, and the dates of residence at each address.

E. ~~Written p~~Proof that the applicant is at least eighteen (18) years of age as shown in a document appropriately issued by a governmental entity.

F. The name and address at which the applicant desires to do business.

G. The applicant's height, weight and hair and eye color.

H. The business, occupation or employment history of the applicant during the previous five (5) years.

I. The business license and permit history of the applicant; whether the applicant, if previously attempting to or operating in this or another City or State under any type of license or permit, has had such license or permit denied, revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation. If the applicant is an entity, the business license and permit history of the applying entity with substantially the same combination of members, managers, general partners, or corporate officers as well as the business license and permit history of the applying entity's members, managers, general partners, or corporate officers, if previously attempting to or operating in this or another city or state under any type of license or permit, and has had such license or permit denied, revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation.

J. All felony and misdemeanor convictions, excluding those for minor traffic

K. The applicant's complete fingerprints, recorded by the Chandler Police Department, for the purpose of obtaining a state and federal criminal records check pursuant to 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 Investigations.

L. ~~Written p~~Proof that the applicant is a legal resident and eligible to work in the United States as documented by a Visa or work permit issued by the appropriate Federal agency, if the applicant is not a citizen of the United States.

M. A list (log) of all employees to be employed at the massage establishment, including ~~the employee's~~ full legal names, dates of birth, home addresses and telephone numbers, employment positions, ~~and~~ the license numbers and license expiration dates for ~~each~~ all massage therapists. A clear and legible copy of the massage therapist license as well as a picture for each massage therapist must also be provided. A copy of the Chandler Transaction Privilege Tax License for all independent contracted~~ed~~ors or sublessee massage therapists must also be provided. An applicant shall provide such other identification and information as the Director may require to aid in verifying the application. The massage establishment permitees shall update this log within 24 hours after any change ~~to~~ of the required information is made.

SECTION IV: That Section 17-4 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17.4 Permit application investigation.

Any applicant for a permit pursuant to this chapter shall personally appear at the Director's Office and shall present the application containing the information required by Sub-section 17-3. The Police Department shall investigate the application and background of the applicant. Based on such investigation, the Police Department shall recommend to the Director the approval or denial of the permit. In addition, Development Services and the Fire Department may inspect any premises proposed as the site of a massage establishment, and shall make separate recommendations to the Director concerning compliance with the provisions of this chapter and other city laws.

SECTION V: That Section 17-5 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-5. Building requirements for massage establishments.

City Staff may, but are not required to, inspect any premises applying for or having been issued a massage establishment permit, at any time after reasonable notice to the applicant or permit holder. A massage establishment must comply with each and all of the following minimum requirements:

A. Minimum lighting shall be provided in accordance with the Chandler Building Code and, in addition, at least one (1) artificial light of not less than sixty (60) watts shall be

provided in each room or enclosure where services are performed on patrons and shall be in use whenever such services are being performed.

B. Minimum ventilation shall be provided in accordance with the Chandler Building Code.

C. Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any massage.

D. Hot and cold running water shall be provided at all times.

E. Closed cabinets shall be provided and used for storage of clean linens.

F. Adequate bathing, dressing, locker and toilet facilities shall be provided for patrons. A minimum of one (1) dressing room containing a separate locker for each patron to be served, which locker shall be capable of being locked, and a minimum of one (1) toilet and one (1) wash basin shall be provided by each massage establishment; provided, however, that if male and female patrons are to be served simultaneously at said establishment, a separate massage room or rooms and separate dressing and toilet facilities shall be provided for male and female patrons.

G. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms and cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

H. Clean and sanitary ~~towels~~cloth or paper fully covering all places on the massage table where patron's body could touch shall be provided for each patron. Additionally, clean and sanitary opaque cloth shall also cover each patron's body.~~The headrest of each table shall be provided with a clean and sanitary towel, paper towel or sheet for each patron.~~

I. A minimum of one (1) separate wash basin shall be provided in each massage establishment, which basin shall provide soap or detergent and hot and cold running water at all times and shall be located within or as close as practical to the area devoted to the performing of massage services. In addition, there shall be provided at each wash basin, sanitary towels placed in permanently installed dispensers.

J. Compliance with all applicable provisions of the City Fire Code.

K. A readable sign at the main entrance identifying the establishment as a massage establishment.

SECTION VI: That Section 17-6 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-6. Display of permit.

Every person, as defined in this Code, Chapter 1, Section 1-2, ~~association, firm or corporation~~ to whom a permit is issued pursuant to this chapter shall display such permit in a ~~conspicuous~~ place upon the business premises that is accessible to public view.

SECTION VII: That Section 17-7 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-7. Required Logs.

17-7.1. Massage establishment permittees shall maintain at the permitted massage establishment a current ~~log of all employees~~Employee Log at the massage establishment, including:

A. Information in accordance with Sub-section 17-3.4(M). License numbers identified in the log shall match those licenses currently displayed, per Sub-section 17-2.2~~Each employee's full legal name, date of birth, home address and telephone number, employment position, date first began employment and when employment was terminated, if applicable~~, and

~~B. Each massage therapist's license number and date of expiration of license.~~

B.~~C.~~ The~~ employee~~ Employee L~~l~~og shall at all times reflect the full legal names of employees for the previous one (1) year. Wherever the E~~e~~mployee L~~l~~og is located,~~ the employee log~~ it shall be subject to inspection and copying upon request, during normal ~~business hours~~hours of operation.

17-7.2 A massage establishment permittee shall maintain at the establishment a log of all massage therapy administered at the establishment. The log shall contain the following information: date, time and type of each massage therapy administered, full legal name and home address of the client, and full legal name of the employee administering the massage therapy. The massage therapy log shall be subject to inspection and copying upon request, during normal ~~business hours~~hours of operation.

SECTION VIII: That Section 17-8 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-8. Inspections.

Each massage establishment, its equipment, logs and methods of operation shall be open to inspection during normal ~~business~~ hours of operation, or when the business appears to be open, by the police or other city staff designated by the Director. ~~Each massage establishment, within ten (10) business days of receiving a written request from the city, shall submit to the police or other city staff designated by the director, a list of massage therapists employed at the massage establishment, including the information required in subsection 17-7.1.~~

SECTION IX: That Section 17-9 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-9. Change of location~~, or~~ employment or business name.

A. A change in location of a massage establishment may be approved by the Director, provided that all ordinances and regulations of the City are complied with and a fee

established by Council resolution is paid to the Director. To this end, the Director shall order inspections of the proposed premises by Development Services and the Fire Department as required hereinabove.

B. Written notification within ten (10) business days shall be made to the Director by a massage establishment whenever a massage therapist enters or leaves the employ of the establishment and shall include all information per Sub-section 17-3.4(M).

C. Written notification within ten (10) business days shall be made to the Director by a massage establishment when the business or doing business as (dba) name is altered.

SECTION X: That Section 17-12 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-12. Specified unlawful activities.

It shall be unlawful:

A. For any person, as defined in this code, Chapter 1, Section 1-2,~~association, firm or corporation~~ permitted as provided in this chapter to operate under any name or ~~conduct business~~provide any services under any designation not specified in such permit.

B. For any person, as defined in this code, Chapter 1, Section 1-2,~~association, firm or corporation~~ permitted as provided in this chapter to provide services any time between the hours of 12:00 midnight and 6:00 a.m.

C. For any person, as defined in this code, Chapter 1, Section 1-2,~~association, firm or corporation~~ to conduct or operate a massage establishment on the same premises which~~whereon is also conducted~~ includes the business of providing alcoholic beverages as defined in A.R.S. Title 4~~a cocktail lounge~~, a photography studio, model studio, art studio, sexually oriented business, telephone answering service, motion picture theater or bookstore.

D. For any person, as defined in this code, Chapter 1, Section 1-2, operating a massage establishment to hire or engage any person conducting massage techniques who does not hold a current massage therapist license issued by the State of Arizona.

E~~D~~. For any person, as defined in this Code, Chapter 1, Section 1-2,~~association, firm or corporation~~ to knowingly hire or engage~~employ~~ a massage therapist who has been convicted within the last five (5) years of a felony or of any offense involving prostitution, indecent exposure, pornography, or any other offense involving moral turpitude.

F~~E~~. For any person, as defined in this code, Chapter 1, Section 1-2, to practice or administer any massage techniques, whether for fee or gratuity:

(1) In a manner or under circumstances intended to arouse, appeal or to gratify sexual desires. While not intended to be exclusive, the intent to arouse, appeal to or gratify sexual desires may be exhibited by the massage therapist doing any of the following: engaging in conversation which leads a person to reasonably believe that the massage therapist will perform sexual services for pay of any kind; directing a customer to touch the massage therapist's genitals, anus or breasts; using hand gestures or motions to

indicate a sexual act; removing the opaque material covering the customer's genital organs, buttocks or breasts;

(2) To any other person whose genital organs are not covered by opaque material;

(3) While dressed in such a way as the genital organs, buttocks or female breast or breasts are not covered by opaque material; or

(4) In any way touch the genital organs of the individual receiving treatment.

SECTION XI: That Section 17-13 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-13. Denial of Application, Termination of Permit; grounds; hearing; appeal.

17-13.1. A massage establishment permit may be denied, revoked or denied renewal for any one (1) or more of the following grounds:

A. The applicant or permitee has not completed or maintained ~~A~~all requirements of the application, per Sub-section 17-3.4. ~~have not been completed or maintained;~~

B. The applicant has failed to provide information reasonably necessary for issuance of the permit, or has falsely answered a question or request for information on the application form;

C. The applicant or permittee has been convicted in a court of competent jurisdiction within the last five (5) years of a felony or of any offense involving prostitution, indecent exposure, pornography, or any other offense involving moral turpitude.

D. The applicant or massage establishment has failed to comply with or is in violation of applicable provisions of any applicable laws, including, but not limited to, the zoning ordinances, building codes, land use or other ordinances and regulations of the City relating to the business or activity to be conducted under the permit.

E. The applicant or permittee is guilty of fraud in conducting the business of a massage establishment, or of fraud or deceit in obtaining a permit to conduct such business.

F. The applicant or permittee has knowingly made any false or misleading statement in any report or record required to be made or kept under this article.

G. The applicant or permittee is guilty of untrue, fraudulent, misleading or deceptive advertising in the business of a massage establishment;

H. The applicant or permittee is grossly ignorant or guilty of willful negligence in the business of a massage establishment;

I. The applicant or permittee is engaged in the business of a massage establishment under a false or assumed name, or is impersonating another establishment of a like or different name;

J. The applicant or permittee has violated any of the provisions of this chapter.

17-13.2. To deny renewal of a permit, or revoke a permit, the Director shall deliver or mail by certified mail to the business address as shown by the permit application, a written notice that said permit renewal is denied or the permit is revoked and which lists the grounds therefor. An expired or revoked permit shall be surrendered to the Director on demand.

17-13.3. The applicant or permittee may request a~~n informal~~ hearing on such denial of renewal or revocation to the Hearing Officer by submitting to the City Clerk a written request within ten (10) calendar days after the date on which the notice of denial or revocation is mailed~~given. and~~ The permitee shall set forth with specificity the ~~specifically the~~factual grounds for the appeal~~hearing~~. Appeals will be heard in accordance with the provisions set forth in Chapter 1-7. The hearing shall take place within 30 business days from receipt of request, however may be continued a reasonable period for good cause. The decision of the Hearing Officer shall be final. If a hearing is not requested within ten (10) days of the date of notice, the revocation shall take effect on the eleventh calendar day after the date of mailing the notice or the expiration date of the permit, whichever first occurs. If a hearing is requested, the revocation, but not a renewal denial, shall not take effect until after the hearing and date of notice of the Hearing Officer's~~Director's~~ final decision. The denial of a renewal of a permit will take effect on the expiration date on the permit whether an appeal is filed or not. Failure to appeal in writing within the prescribed time constitutes a waiver of the right to appeal. The decision of the Hearing Officer shall be final.~~Appeal of the Director's decision to the City Manager, may not be made prior to the date of notice of Director's final decision.~~

~~*17-13.4.* Any parties aggrieved by the final decision of the Director/designee with regard to the permits required by this chapter may within ten (10) days of the date of notice of such decision, give written notice to the City Clerk of intention to appeal to the City Manager/designee. A timely appeal shall result in a stay of any decision of the Director/designee. Appeals will be heard in accordance with the provisions set forth in Chapter 1. Failure to appeal in writing within the prescribed time constitutes a waiver of the right to appeal. The decision of the City Manager/designee shall be final.~~

SECTION XII: That Section 17-14 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-14. Application after denial or termination of permit.

No person, as defined in this code, Chapter 1, Section 1-2,~~association, firm or corporation~~ may be approved~~apply~~ for a massage establishment permit within one (1) year from the denial or revocation of any such permit to such applicant or location.~~, unless the cause of such denial or revocation has been, to the satisfaction of the Director, removed within such time.~~

SECTION XIII: That Section 17-16 of Chapter 17, Code of the City of Chandler is hereby amended as follows:

17-16. Penalty.

Any person found guilty of violating the provisions of Chapter 17, Chandler City Code, shall be guilty of a misdemeanor as set forth in Chandler City Code Section 1-8. ~~which provides that upon conviction the person shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500.00) or by imprisonment for not to exceed six (6) months, or by both such fine and imprisonment.~~

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2014.

ATTEST:

_____ _____
CITY CLERK MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this _____ day of _____, 2013.

ATTEST:

_____ _____
CITY CLERK MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4470 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of August, 2013, and that a quorum was present thereat.

_____
CITY CLERK

Approved as to form:

_____
CITY ATTORNEY

Chapter 17 MASSAGE ESTABLISHMENTS [1]

17-1. Definitions.

17-2. Permit required.

17-3. New permit application; fees.

17-4. Permit application investigation.

17-5. Building requirements for massage establishments.

17-6. Display of permit.

17-7. Required logs.

17-8. Inspections.

17-9. Change of location or employment.

17-10. Permit renewal.

17-11. Sale, transfer or expansion of massage establishment.

17-12. Specified unlawful activities.

17-13. Denial of application, termination of permit; grounds; hearing; appeal.

17-14. Application after denial or termination of permit.

17-15. Exemptions.

17-16. Penalty.

17-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them in this section:

Director. The City's Management Services Director or designee.

Employee. Any person who performs any service at a massage establishment on a full-time, part-time or contract basis, whether or not the person is designated an employee, independent contractor or sub-lessee of massage establishment. Employee does not include a person exclusively at the massage establishment for repair or maintenance of the massage establishment or for the delivery of goods to the licensee.

Employee Log. The log generated and maintained in accordance with Sub-section 17-3.4 and 17-7.1.

Hearing Officer. City Manager or designee.

Massage establishment. Any place of business or facility wherein any massage techniques as defined below are administered, practiced or used.

Massage techniques. The therapeutic manipulation of the human body through the skillful application of varied movements of the hands and fingers of the therapist upon the muscles and other soft tissues of the external parts of the body including effleurage, petrissage, tapotement, friction,

vibration, rolling, oil rubs, salt glows, alcohol rubs, and the rotation, circumduction, flexion and extension of the extremities. Massage techniques also include hydrotherapy, consisting of tub, shower or cabinet baths, hot and cold packs, and adjunctive therapies, including the use of electrical devices such as heat lamps and vibrators which have been approved by the American Massage Therapy Association, and methodical pressure. All massage techniques are to be applied to external parts of the body only.

Massage therapist. A person who has completed a required course of study in a school of massage therapy as recognized by the Arizona Revised Statutes (A.R.S. Title 32, Chapter 42 and who practices and administers any or all massage techniques described in this chapter for a fee or income of any kind in the City.

Moral turpitude. Any act or behavior that gravely violates moral sentiment or the accepted moral standards of the community.

(Ord. No. 3623, § 1, 12-13-04)

17-2. Permit and license requirments.

17-2.1. No person, as defined in this Code, Chapter 1, Section 1-2, shall conduct or operate a massage establishment without a current massage establishment permit as required by this chapter.

17-2.2. No person shall practice or administer any massage techniques, whether for a fee or gratuity, without a current massage therapist license as required by A.R.S. Title 32, Chapter 42. The massage therapist license, or copy thereof, shall be displayed in a manner visible to all who enter the premises when the therapist practices or administers any massage teniques for a fee or gratuity.

17-2.3. No person, as defined in this Code, Chapter 1, Section 1-2, shall employ as a massage therapist any person who does not hold a current unrevoked and unsuspended massage therapist license as required by A.R.S. Title 32, Chapter 42, and whose true name and massage therapist license number has not been previously provided to the Director, per Subsection 17-7 and 17-9(B).

17-2.4. The permit and licenses required by this article are in addition to any other applicable licenses or permits required by the city, county, or state. Persons and massage establishments permitted under this article shall comply with all other applicable ordinances and laws, including the City zoning ordinance.

(Ord. No. 3623, § 1, 12-13-04)

17-3. New permit application; fees.

17-3.1. Any person, as defined in this Code, Chapter 1, Section 1-2, desiring to obtain a massage establishment permit shall make application for same to the Director, who shall refer such application to the Chief of Police for appropriate investigation. The Director shall have sixty (60) days from the date of the completion of all application materials and requirements to either issue or deny any permit subject to this article.

17-3.2. The application shall be accompanied by a nonrefundable application fee and an annual permit fee, established by Council resolution. If the permit is denied, the paid annual permit fee shall be refunded. The following table reflects how the annual permit fee is paid:

January 1 — March 31	100% of annual permit fee
April 1 — June 30	75% of annual permit fee
July 1 — September 30	50% of annual permit fee
October 1 — December 31	25% of annual permit fee

17-3.3. The applicant shall pay a fee, established by Council resolution, to cover the cost of federal fingerprint processing or federal criminal history record information checks.

17-3.4. Information required. An applicant for a massage establishment permit shall submit the following on a form prescribed by the Director:

A. The full legal name and current residence address of the applicant.

B. If the applicant is a corporation, partnership or other business entity, the name of the entity shall be set forth exactly as shown in its organizational documents, together with the state and date of creation. If the entity was not formed in Arizona, it shall show proof that it has been authorized to do business in Arizona in accordance with all applicable laws. The applicant entity, by appropriate resolution of the entity during a duly conducted meeting of its managing body, shall designate one (1) of its officers or general partners to act as its responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this chapter.

C. Any other names by which the applicant has been known during the previous five (5) years.

D. The two (2) residence addresses immediately prior to the present address of the applicant, and the dates of residence at each address.

E. Proof that the applicant is at least eighteen (18) years of age as shown in a document appropriately issued by a governmental entity.

F. The name and address at which the applicant desires to do business.

G. The applicant's height, weight and hair and eye color.

H. The business, occupation or employment history of the applicant during the previous five (5) years.

I. The business license and permit history of the applicant; whether the applicant, if previously attempting to or operating in this or another City or State under any type of license or permit, has had such license or permit denied, revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation. If the applicant is an entity, the business license and permit history of the applying entity with substantially the same combination of members, managers, general partners, or corporate officers as well as the business license and permit history of the applying entity's members, managers, general partners, or corporate officers, if previously attempting to or operating in this or another city or state under any type of license or permit, and has

had such license or permit denied, revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation.

J. All felony and misdemeanor convictions, excluding those for minor traffic offenses, and the grounds of such conviction.

K. The applicant's complete fingerprints, recorded by the Chandler Police Department, for the purpose of obtaining a state and federal criminal records check pursuant to 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 Investigations.

L. Proof that the applicant is a legal resident and eligible to work in the United States as documented by a Visa or work permit issued by the appropriate Federal agency, if the applicant is not a citizen of the United States.

M. A list (log) of all employees to be employed at the massage establishment, including full legal name, dates of birth, home addresses and telephone numbers, employment positions, the license numbers and license expiration dates for all massage therapists. A clear and legible copy of the massage therapist license as well as a picture for each massage therapist must also be provided. A copy of the Chandler Transaction Privilege Tax License for all independent contractors or sublessee massage therapists must also be provided. An applicant shall provide such other identification and information as the Director may require to aid in verifying the application. The massage establishment permitees shall update this log within 24 hours after any change of the required information is made.

(Ord. No. 3623, § 1, 12-13-04)

17-4. Permit application investigation.

Any applicant for a permit pursuant to this chapter shall personally appear at the Director's Office and shall present the application containing the information required by Sub-section 17-3. The Police Department shall investigate the application and background of the applicant. Based on such investigation, the Police Department shall recommend to the Director the approval or denial of the permit. In addition, Development Services and the Fire Department may inspect any premises proposed as the site of a massage establishment, and shall make separate recommendations to the Director concerning compliance with the provisions of this chapter and other city laws.

(Ord. No. 3623, § 1, 12-13-04)

17-5. Building requirements for massage establishments.

City Staff may, but are not required to, inspect any premises applying for or having been issued a massage establishment permit, at any time after reasonable notice to the applicant or permit holder. A massage establishment must comply with each and all of the following minimum requirements:

A. Minimum lighting shall be provided in accordance with the Chandler Building Code and, in addition, at least one (1) artificial light of not less than sixty (60) watts shall be provided in each room or enclosure where services are performed on patrons and shall be in use whenever such services are being performed.

B. Minimum ventilation shall be provided in accordance with the Chandler Building Code.

C. Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any massage.

D. Hot and cold running water shall be provided at all times.

E. Closed cabinets shall be provided and used for storage of clean linens.

F. Adequate bathing, dressing, locker and toilet facilities shall be provided for patrons. A minimum of one (1) dressing room containing a separate locker for each patron to be served, which locker shall be capable of being locked, and a minimum of one (1) toilet and one (1) wash basin shall be provided by each massage establishment; provided, however, that if male and female patrons are to be served simultaneously at said establishment, a separate massage room or rooms and separate dressing and toilet facilities shall be provided for male and female patrons.

G. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms and cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

H. Clean and sanitary cloth or paper fully covering all places on the massage table where patron's body could touch shall be provided for each patron. Additionally, clean and sanitary opaque cloth shall also cover each patron's body.

I. A minimum of one (1) separate wash basin shall be provided in each massage establishment, which basin shall provide soap or detergent and hot and cold running water at all times and shall be located within or as close as practical to the area devoted to the performing of massage services. In addition, there shall be provided at each wash basin, sanitary towels placed in permanently installed dispensers.

J. Compliance with all applicable provisions of the City Fire Code.

K. A readable sign at the main entrance identifying the establishment as a massage establishment.

(Ord. No. 3623, § 1, 12-13-04)

17-6. Display of permit.

Every person, as defined in this Code, Chapter 1, Section 1-2, to whom a permit is issued pursuant to this chapter shall display such permit in a place upon the business premises that is accessible to public view.

(Ord. No. 3623, § 1, 12-13-04)

17-7. Required logs.

17-7.1. Massage establishment permittees shall maintain at the permitted massage establishment a current Employee Log at the massage establishment, including:

A. Information in accordance with Sub-section 17-3.4(M). License numbers identified in the log shall match those licenses currently displayed, per Sub-section 17-2.2, and

B. The Employee Log shall at all times reflect the full legal names of employees for the previous one (1) year. Wherever the Employee Log is located, it shall be subject to inspection and copying upon request, during normal hours of operation.

17-7.2 A massage establishment permittee shall maintain at the establishment a log of all massage therapy administered at the establishment. The log shall contain the following information: date, time and

type of each massage therapy administered, full legal name and home address of the client, and full legal name of the employee administering the massage therapy. The massage therapy log shall be subject to inspection and copying upon request, during normal hours of operation.

(Ord. No. 3623, § 1, 12-13-04)

17-8. Inspections.

Each massage establishment, its equipment, logs and methods of operation shall be open to inspection during normal hours of operation, or when the business appears to be open, by the police or other city staff designated by the Director.

(Ord. No. 3623, § 1, 12-13-04)

17-9. Change of location, employment or business name.

A. A change in location of a massage establishment may be approved by the Director, provided that all ordinances and regulations of the City are complied with and a fee established by Council resolution is paid to the Director. To this end, the Director shall order inspections of the proposed premises by Development Services and the Fire Department as required hereinabove.

B. Written notification within ten (10) business days shall be made to the Director by a massage establishment whenever a massage therapist enters or leaves the employ of the establishment and shall include all information per Sub-section 17-3.4(M).

C. Written notification within ten (10) business days shall be made to the Director by a massage establishment when the business or doing business as (dba) name is altered.

(Ord. No. 3623, § 1, 12-13-04)

17-10. Permit renewal.

Any permit issued under this article shall be valid only for the calendar year in which it is issued. Each permit expires on December 31 of each year and must be renewed on or before January 1 of the following year. An applicant for a permit renewal shall:

A. Submit to the Director a completed renewal application, including all information required in subsection 17-3.4 of this article and pay an annual fee established by Council resolution.

B. Comply with the fingerprinting requirements of this article.

C. Any person who fails to renew a massage establishment permit on or before the first day of January of any year and who conducts any activity covered by such permit after such date shall be deemed to be operating without a permit and shall be subject to a penalty established by Council resolution, in addition to the annual fee.

D. Permits which have not been renewed within sixty (60) days shall be considered not renewable and in addition to the penalty, the applicant shall be required to meet all of the requirements for a new permit.

(Ord. No. 3623, § 1, 12-13-04)

17-11. Sale, transfer or expansion of massage establishment.

A. Upon the sale or transfer of any interest in a massage establishment, the permit therefor shall be null and void. A new application shall be made by any person, association, firm or corporation desiring to own or to operate all or any portion thereof of the establishment. The provisions of this chapter shall apply to any person, association, firm or corporation applying for a massage establishment permit for premises previously used as such establishment.

B. Any such sale or transfer of any interest in an existing massage establishment or any application for enlargement or expansion of the building or other place of business of a massage establishment shall require inspection and compliance with this chapter.

(Ord. No. 3623, § 1, 12-13-04)

17-12. Specified unlawful activities.

It shall be unlawful:

A. For any person, as defined in this code, Chapter 1, Section 1-2, permitted as provided in this chapter to operate under any name or provide any services under any designation not specified in such permit.

B. For any person, as defined in this code, Chapter 1, Section 1-2, permitted as provided in this chapter to provide services any time between the hours of 12:00 midnight and 6:00 a.m.

C. For any person, as defined in this code, Chapter 1, Section 1-2, to conduct or operate a massage establishment on the same premises which includes the business of providing alcoholic beverages as defined in A.R.S. Title 4, a photography studio, model studio, art studio, sexually oriented business, telephone answering service, motion picture theater or bookstore.

D. For any person, operating a massage establishment to hire or engage any person conducting massage techniques who does not hold a current massage therapist license issued by the State of Arizona.

E. For any person, as defined in this Code, Chapter 1, Section 1-2, to knowingly hire or engage a massage therapist who has been convicted within the last five (5) years of a felony or of any offense involving prostitution, indecent exposure, pornography, or any other offense involving moral turpitude.

F. For any person, as defined in this code, Chapter 1, Section 1-2, to practice or administer any massage techniques, whether for fee or gratuity:

(1) In a manner or under circumstances intended to arouse, appeal or to gratify sexual desires. While not intended to be exclusive, the intent to arouse, appeal to or gratify sexual desires may be exhibited by the massage therapist doing any of the following: engaging in conversation which leads a person to reasonably believe that the massage therapist will perform sexual services for pay of any kind; directing a customer to touch the massage therapist's genitals, anus or breasts; using hand gestures or motions to indicate a sexual act; removing the opaque material covering the customer's genital organs, buttocks or breasts;

(2) To any other person whose genital organs are not covered by opaque material;

(3) While dressed in such a way as the genital organs, buttocks or female breast or breasts are not covered by opaque material; or

(4) In any way touch the genital organs of the individual receiving treatment.

(Ord. No. 3623, § 1, 12-13-04)

17-13. Denial of application, termination of permit; grounds; hearing; appeal.

17-13.1. A massage establishment permit may be denied, revoked or denied renewal for any one (1) or more of the following grounds:

A. The applicant or permitee has not completed or maintained all requirements of the application, per Sub-section 17-3.4.

B. The applicant has failed to provide information reasonably necessary for issuance of the permit, or has falsely answered a question or request for information on the application form;

C. The applicant or permittee has been convicted in a court of competent jurisdiction within the last five (5) years of a felony or of any offense involving prostitution, indecent exposure, pornography, or any other offense involving moral turpitude.

D. The applicant or massage establishment has failed to comply with or is in violation of applicable provisions of any applicable laws, including, but not limited to, the zoning ordinances, building codes, land use or other ordinances and regulations of the City relating to the business or activity to be conducted under the permit.

E. The applicant or permittee is guilty of fraud in conducting the business of a massage establishment, or of fraud or deceit in obtaining a permit to conduct such business.

F. The applicant or permittee has knowingly made any false or misleading statement in any report or record required to be made or kept under this article.

G. The applicant or permittee is guilty of untrue, fraudulent, misleading or deceptive advertising in the business of a massage establishment;

H. The applicant or permittee is grossly ignorant or guilty of willful negligence in the business of a massage establishment;

I. The applicant or permittee is engaged in the business of a massage establishment under a false or assumed name, or is impersonating another establishment of a like or different name;

J. The applicant or permittee has violated any of the provisions of this chapter.

17-13.2. To deny renewal of a permit, or revoke a permit, the Director shall deliver or mail by certified mail to the business address as shown by the permit application, a written notice that said permit renewal is denied or the permit is revoked and which lists the grounds therefor. An expired or revoked permit shall be surrendered to the Director on demand.

17-13.3. The applicant or permittee may request a hearing on such denial of renewal or revocation to the Hearing Officer by submitting to the City Clerk a written request within ten (10) calendar days after the date on which the notice of denial or revocation is mailed. The permitee shall set forth with specificity the factual grounds for the appeal. Appeals will be heard in accordance with the provisions set forth in Chapter 1-7. The hearing shall take place within 30 business days from receipt of request, however may be continued a reasonable period for good cause. The decision of the Hearing Officer shall be final. If a hearing is not requested within ten (10) days of the date of notice, the revocation shall take effect on the eleventh calendar day after the date of mailing the notice or the expiration date of the permit, whichever first occurs. If a hearing is requested, the revocation, but not a renewal denial, shall not take effect until

after the hearing and date of notice of the Hearing Officer's final decision. The denial of a renewal of a permit will take effect on the expiration date on the permit whether an appeal is filed or not. Failure to appeal in writing within the prescribed time constitutes a waiver of the right to appeal. The decision of the Hearing Officer shall be final.

(Ord. No. 3623, § 1, 12-13-04)

17-14. Application after denial or termination of permit.

No person, as defined in this code, Chapter 1, Section 1-2, may be approved for a massage establishment permit within one (1) year from the denial or revocation of any such permit to such applicant or location.

(Ord. No. 3623, § 1, 12-13-04)

17-15. Exemptions.

A. The provisions of this chapter shall not apply to:

1. Persons authorized by the laws of this State to practice medicine, osteopathy, chiropractic, podiatry, naturopathy or acupuncture;

2. Registered nurses, licensed practical nurses or technicians, when acting under the supervision of a licensed physician, osteopath, or chiropractor.

B. Any exemption herein granted is effective only insofar as and to the extent that the bona fide practice of the business or profession of the person exempted overlaps into the field comprehended by this chapter, and exemptions granted herein are solely for those activities which are performed in the course of the bona fide practice of the business or profession of the person exempted.

(Ord. No. 3623, § 1, 12-13-04)

17-16. Penalty.

Any person found guilty of violating the provisions of Chapter 17, Chandler City Code, shall be guilty of a misdemeanor as set forth in Chandler City Code Section 1-8.

(Ord. No. 3623, § 2, 12-13-04)

FOOTNOTE(S):

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Editor's note— Ord. No. 2987, § 2, adopted Aug. 26, 1999, repealed former Ch. 15, in its entirety, which pertained to licenses. Section 3 of said ordinance enacted provisions designated as a new Ch. 17 to read as herein set out. Subsequently, Ord. No. 3623, § 1, adopted Dec. 13, 2004, amended Ch. 17, in its

entirety, to read as herein set out in §§ 17-1—17-15. Prior to inclusion of said ordinance, Ch. 17 pertained to similar subject matter and derived from: Ord. No. 1347, § 1, adopted July 9, 1984; Ord. No. 2987, § 3, adopted Aug. 26, 1999; and Ord. No. 3442, § 1, adopted May 22, 2003. See also the Code Comparative Table. (Back)