

DRAFT AS OF 11-12-2019

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EXPLANATION: Matter underlined is new; matter in brackets and stricken [--] is material to be repealed.

BILL NO. ____
ORDINANCE NO. ____

AN ORDINANCE TO AMEND TITLE 5 OF THE RENO MUNICIPAL CODE ENTITLED “PRIVILEGED LICENSES, PERMITS AND FRANCHISES,” BY ADDING CHAPTER 5.23 ENTITLED “MASSAGE ESTABLISHMENTS,” IN ITS ENTIRETY TO PROVIDE FOR THE MINIMUM LICENSING REQUIREMENTS FOR MASSAGE ESTABLISHMENTS; AND OTHER MATTERS PROPERLY RELATING THERETO.

SPONSORED BY: COMMUNITY DEVELOPMENT: BUSINESS LICENSE DIVISION

THE CITY COUNCIL OF THE CITY OF RENO DOES ORDAIN:

SECTION 1. Title 5, Chapter 5.23 of the Reno Municipal Code, is hereby added to read as follows:

CHAPTER 5.23. - MASSAGE ESTABLISHMENTS

Sec. 5.23.005. - Purpose and short title.

This chapter establishes the minimum procedural requirements for business licenses issued by the city, and shall be known as the Massage Establishment Code. Nothing in this chapter shall be deemed or construed to exempt any organization from complying with the provisions of any other ordinance of the city, including but not limited to permit requirements, zoning requirements, nuisance ordinances and restrictions on privileged or illegal activities.

Sec. 5.23.006. - Findings

The Reno City Council finds and declares that the public health, safety, or welfare of the inhabitants of the city require the regulation and control of persons engaged in the business of massage. All massage establishments shall be licensed and regulated so as to protect the public health, safety, good order and general welfare of the inhabitants of the city and to safeguard the public. It is further found and declared that the right to obtain such license is a privilege and that the operation of a massage establishment is a privileged business subject to regulations, and that

the license may be revoked for violation of the laws or regulations of the state, the conditions of this chapter, and other ordinances of this city.

Sec. 5.23.007. - Definitions.

The following definitions are in addition to the definitions set forth in chapter 5.05 of this title. Unless the context clearly indicates a different meaning, the definitions below shall govern the construction, meaning, and application of words and phrases used in this chapter:

Applicant means any person who has applied for a city business license.

Advertising means the intentional placement or issuance of any sign, card or device, or the permitting or allowing of any sign or marking on a motor vehicle, in any building, structure, newspaper, magazine, handbill, flyer or other publication, any airway transmission, on the Internet or in any directory under the listing of "massage therapy" or "massage" or other words of similar import.

Ancillary employee means any employee of a massage establishment or of an independent massage therapist that is not a massage therapist.

Board means the Nevada State Board of Massage Therapy.

Chair massage means a massage administered by a massage therapist to a fully-clothed patron's neck, shoulders, back, arms, hands and feet utilizing a massage chair. A patron or guest at a hotel or resort hotel receiving a chair massage in the swimming pool area of the hotel or resort hotel shall be considered fully-clothed when wearing appropriate public swimming attire.

Control means the power to direct or cause the direction of the management and policies of a massage establishment, massage therapist, employee or agent in any way.

Employee means any of the following: (i) a massage therapist employed by a massage establishment to provide massage therapy, but who is not an independent contractor of the massage establishment; (ii) a manager in charge and (iii) an ancillary employee.

Independent massage therapist means: (i) a massage therapist who is a sole practitioner or independent contractor; or (ii) a person otherwise providing massage services as described in this chapter who is not an employee of a massage establishment.

Manager in charge means a person or persons who is responsible for the operation of a massage establishment, which includes the first point of contact upon entering the establishment, and take payment and/or coordinate business transaction.

Massage or massage therapy means the application of a system of pressure to the muscular structure and soft tissues of the human body as described in Nevada Revised Statute (NRS) and the Nevada Administrative Code (NAC) Chapters 640C, and for the purposes of this chapter, shall also mean any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands, or with the aid of any mechanical or electrical apparatus or appliances, with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointment or other such similar preparations commonly used in the practice of massage.

Massage establishment means a fixed place of business where any individual, firm, company, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on, or permits to be engaged in or conducted, for money or any other consideration, any massage therapy. For purposes of this chapter, including, without limitation, responsibility for compliance with the provisions of this chapter and penalties for failure to comply, the term shall include the owners, managers, members, partners, directors, or shareholders of the business entity operating as a massage establishment. This definition does not apply if massage therapy is an ancillary use to the primary business activity.

Massage therapist means any person who is licensed pursuant to the provisions of NRS and NAC Chapters 640C to engage in the practice of massage therapy or any person performing massage therapy as defined above. While the provisions of this chapter apply to anyone performing massage therapy or operating a massage establishment, regardless of whether such person or place is licensed as such, nothing in this chapter shall be construed to allow the practice of massage without all appropriate licenses and permits. Massage therapist includes both independent massage therapists and massage therapists who are employees of a massage establishment unless otherwise specified.

Outcall massage service means any massage performed by a massage therapist or independent massage therapist upon a patron at a location other than a location licensed as a massage establishment.

Patron means any person who receives a massage or other service offered by a massage establishment or independent massage therapist.

RPD means the City of Reno Police Department.

Sexual activity means but is not limited to: sexual intercourse, masturbation or any other sex act, photographing or filming the body or any body part, and/or showing explicit photographs or video.

Specified anatomical area means the human genitals or pubic region, anus, or perineum of any person, or female breasts.

Sec. 5.23.020. - Massage business license required: unlawful to operate without a license.

- (a) It is unlawful for any person to operate, manage or maintain a business wherein massages are performed unless such a person holds a valid massage establishment business license pursuant to the provisions of this chapter.
- (b) It is unlawful for any person to provide massage therapy services in the city without first having obtained, and thereafter maintaining a valid massage therapist license pursuant to NRS and NAC Chapters 640C.
- (c) It is unlawful for a massage establishment or manager in charge, if applicable, of a massage establishment to allow massage therapy to be performed at the massage establishment by a person not licensed as a massage therapist.
- (d) Any owner of a massage establishment who wishes to engage in the occupation of massage must also hold a valid massage therapist license by the Board in addition to the massage establishment business license required pursuant to this chapter.
- (e) Any independent massage therapist that wishes to perform massage therapy within the city, including chair massage, must first be licensed as a massage therapist by the Board pursuant to NRS and NAC Chapters 640C and must also hold a valid business license for massage therapy as an independent contractor pursuant to the provisions of title 4.
- (f) A massage establishment business license shall be issued for a specific location and shall authorize the performing of a massage at the location specified in the license and on an outcall basis under such conditions as will insure the legitimacy of such outcall massages.

Sec. 5.23.030. - Massage establishment license application.

- (a) Every person(s) required to procure a massage establishment license under the provisions of this title shall submit an application upon forms provided by the city.

 - (1) A business license application will be considered properly completed upon submission of all required application materials and information the city shall find to be reasonably necessary to the fair and efficient administration of this title, including payment of all required application and investigation fees. Required application information includes submission of all fingerprints and information necessary to enable the RPD to complete the background investigation.
 - (2) Pursuant to NRS 239B.010(1)(a) and P.L. 92-544, the police department is authorized to submit the fingerprints of an applicant for a massage establishment business license, plus any required fees and any information required for the background check, to the Central Repository for Nevada Records of Criminal History for a statewide

background check and for submission by the Central Repository to the FBI to obtain the FBI nationwide background check of the applicant. The Nevada Department of Public Safety is hereby authorized to exchange such fingerprint data with the FBI for purposes of the background check.

a. In all cases where the applicant for a license is a corporation, all of the principal officers of such corporation must present themselves for investigation and fingerprinting.

b. In all cases where the applicant for a license is a limited liability company, all members having management authority for such limited-liability company must present themselves for investigation and fingerprinting.

(b) Every applicant who does not hold a valid massage therapist license issued pursuant to NRS and NAC Chapters 640C or has not conducted a background check for a massage therapist license in the past 24 months from the date of an accepted city license application is subject to a background check to determine suitability for the massage establishment license, including a Federal Bureau of Investigation (FBI) fingerprint-based investigation prior to the issuance of any license. The applicant must also provide such information as may be required by the RPD to complete the background investigation pursuant to Chapter 5.05.

(c) An application for a massage establishment license shall, at a minimum, include the following information:

(1) A description of all business activity conducted or intended to be conducted on the premises;

(2) Whether the applicant or anyone having ownership interest in the business or proposed business has:

a. Ever been convicted of any crime, excluding minor traffic offenses and, if so, the application shall state the person involved, the charge, date, court and disposition of the charges;

b. Ever had a business license denied, revoked or charges filed therefore, and if so, the application shall state the name of the business, date, jurisdiction, and outcome of any hearing; and

C. Ever owned or operated an escort service, an outcall promoter establishment, a brothel or adult nightclub, adult theater, adult bookstore or any other adult business and if so, the name of the business and address, dates involved and position of interest therein.

- (3) Be signed by the applicant if he is a natural person; in the case of an association or partnership, by a member or partner with authority to bind the association or partnership; in the case of a corporation, by an executive officer or a person specifically authorized by the corporation to sign the application, to which must be attached the written evidence of the authority.

All license fees deposited or submitted upon application are nonrefundable unless authorized as refundable by the city finance director or his/her designee.

Sec. 5.23.035. – Background requirement on renewal of massage establishment license.

- (a) Every licensee who holds a valid massage therapist license issued pursuant to NRS and NAC Chapters 640C and has not conducted a background check for the massage therapist license in the past 24 months from the date of the adoption of this ordinance is subject to a background check to determine suitability for the massage establishment license, including a Federal Bureau of Investigation (FBI) fingerprint-based investigation prior to the issuance of any license renewal. The licensee must also provide such information as may be required by the RPD to complete the background investigation pursuant to Chapter 5.05.
- (b) Every licensee shall comply with this background requirement within 36 months from the date of the adoption of this ordinance.

Sec. 5.23.040. - Advertising.

- (a) No massage establishment or massage therapist shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture, or statement which is known or, through the exercise of reasonable care, should be known to be false, deceptive or misleading or which would reasonably suggest to prospective patrons that sexual stimulation or sexual gratification will be provided, in order to induce any person to purchase or utilize any massage services of the massage establishment or massage therapist.
- (b) All advertising by a massage therapist must include his or her legal name, license number and the name of his or her employer, if applicable. All advertising by a massage establishment must include the business name and license number(s) of the massage establishment.
- (c) In the event a massage establishment, licensee or manager in charge, if applicable, becomes aware of any advertising that: (i) directs the viewer of the advertisement to the massage establishment, either by name or address; and (ii) violates the provisions of this section, the massage establishment, licensee or manager in charge shall take reasonable steps to have such advertising removed or taken down, or in the event such advertising is on flyers or handbills, shall cease distributing them. With respect to internet advertising or posting, reasonable efforts shall include, but not be limited to, requesting the host of the website on which the advertising is located, or the person posting the advertisement, to remove or delete the advertisement or post.

(d) Two or more violations of section 5.23.040 within a 24 month period may subject the massage establishment license or independent massage therapist to suspension or revocation pursuant to chapter 4.04.150.

Sec. 5.23.050. - Massage establishment operations.

(a) A massage establishment license allows the conduct of massage services only in a properly zoned area within the city. A massage establishment license is required when a massage establishment is operated in owned, leased or rented space, including, without limitation, in a hotel, resort hotel, health club, fitness center or cosmetology establishment.

(b) The operating requirements of all massage establishments are as follows:

(1) The licensee or a person(s) designated as the manager in charge, shall be on the premises at all times of operation. The manager in charge shall be considered a key employee subject to the requirements of section 4.04.180. A massage establishment may have more than one manager in charge; provided, however, that at least the licensee or one manager in charge must be present on the premises of the massage establishment at all times while the massage establishment is open for business. Each person identified as a manager in charge shall either be a licensed massage therapist pursuant to NRS and NAC Chapter 604C.

(2) The licensee or a person designated as the manager in charge shall be responsible for ensuring that all persons performing massage therapy at the massage establishment have a valid, unexpired license from the Board. The licensee or a person designated as the manager in charge shall maintain a list of all persons employed each day at the massage establishment, whether as independent massage therapists or employees and their license numbers, if any. Such list shall be available for viewing by agents or officers of the license division, code enforcement, police department or state or county regulatory agencies at all times the establishment is open for the conduct of business.

(3) Each massage establishment shall comply with regulations relating to sanitation, hygiene and safety adopted by the Board pursuant to NRS and NAC Chapters 604C.

(4) Each massage establishment shall provide all patrons clean, sanitary and opaque coverings capable of covering the patron's specified anatomical areas. No common use of such coverings shall be permitted and reuse of such coverings is prohibited until washed and cleaned.

(5) No massage establishment shall be equipped with any electronic, mechanical or artificial device used or capable of being used for recording either audio or video of activities, conversations or other sounds in any treatment rooms.

- (6) No massage establishment shall be equipped with tinted or two-way mirrors in any treatment room.
 - (7) No person shall operate a massage establishment or administer a massage for money or any other consideration between the hours of 10:00 p.m. and 8:00 a.m.
 - (8) No massages shall be performed in any room where table showers or shower apparatus are located.
 - (9) No massage establishment shall place or operate an Automated Teller Machine (ATM) within the premises where licensed.
 - (10) Exterior windows shall not be tinted, covered or blocked in such a manner as to impede a view inside the massage establishment from the exterior.
 - (11) Every massage establishment shall post a copy of the license(s) required by this chapter in a prominent place in the reception area of the establishment.
- (c) If agents or officers of the license division, code enforcement, police department or state or county regulatory agencies observe that an establishment has failed to comply with any of the operating requirements set forth in this section 5.23.050, the agent or officer may take action pursuant to this chapter and provisions in title 4 and/or title 5.

Sec. 5.23.060. - Independent massage therapist; Authorization and requirements.

- (a) A massage therapist independent contractor license authorizes the licensee to:
- (1) Perform outcall massage therapy from his or her residence in the city after obtaining a home based business license in accordance with title 4;
 - (2) Perform massage therapy in a leased or rented room in a licensed massage establishment; and
 - (3) Advertise as an independent massage therapist.
- (b) If an independent massage therapist operating as a sole proprietor wishes to conduct his or her business from a commercial location, he or she is not required to obtain a separate massage establishment license.

Sec. 5.23.070. - Massage establishment; license issuance or denial; revocation or suspension.

- (a) All applications for licenses shall be referred to the appropriate city departments for review and investigation. These departments shall either recommend approval or denial of the application and forward a recommendation to the city license office. The city license office shall review the recommendations of all the applicable departments and decide whether to

approve or deny the license. The city license office thereafter shall either issue a license or notify the applicant of denial, including the reason for such denial, in accordance with its decision.

(b) The city shall consider the application by examination of:

(1) The information provided within the submitted application;

(2) The circumstances of the applicant's criminal and business history;

(3) The proposed business operation of the applicant; and

(4) The reports of all applicable departmental reviews.

(c) The license application shall be denied if:

(1) The applicant, whether an individual or any of the stockholders, officers or directors of a corporation, or any person having a ten percent or more ownership interest in the business or proposed business:

a. Has been convicted of any of the following offenses within the five years immediately preceding the date of the application, regardless of the jurisdiction of the conviction:

(1) A felony or any crime which, under the laws of this state, would amount to a felony;

(2) Any crime of which theft, fraud or intent to defraud is an element;

(3) Unlawfully possessing or distributing a controlled substance;

b. Has been convicted of any of the following offenses within the ten years immediately preceding the date of the application, regardless of the jurisdiction of the conviction:

(1) Solicitation, prostitution, or pandering; or

(2) Any sex offense requiring the applicant to register under NRS 179D.441, et seq.

(2) The business operation as proposed by the applicant would not comply with all applicable laws, including but not limited to this title and the city's building, zoning, fire and health regulations.

(d) Denial. If the applicant is denied, the city shall notify the applicant with the reason(s) stated for denial. Notification of the denial shall be provided by certified mail, mailed to the applicant's address provided on the license application which shall be considered to be the correct address. Each applicant has the burden to furnish any change of address to the city.

Notice of the review decision shall officially commence on the day the decision is personally given or the day the decision is deposited into the mail under certification.

- (1) Upon denial of a license or renewal application under title 4 and all administrative decisions under title 5 as defined in section 5.05.017, the applicant is prohibited from conducting any business for which the approval was denied until such time as an appeal has been heard and the denial has been reversed. Any person aggrieved by the foregoing in the denial of the application for a license shall have the right to appeal to the administrative hearing officer pursuant to section 4.04.060.
- (e) Suspension or revocation. A massage establishment license may be suspended or revoked in accordance with title 4 and/or title 5 of this Code. In addition, a license for a massage establishment may be suspended or revoked on the following grounds:
 - (1) A licensee or manager in charge knowingly commits any act which would have constituted grounds for denial of an application for a license;
 - (2) A licensee or manager in charge has violated, or permitted, allowed or caused a violation of any provision of title 4 and/or title 5 of the Reno Municipal Code, any state law, or any condition of approval imposed upon the issuance of the license;
 - (3) The licensee or manager in charge has failed to maintain the premises in compliance with the requirements of: any state law, title 4 and/or title 5 of the Reno Municipal Code, the building official, the fire chief or any environmental or health department;
 - (4) Any act or omission committed by any employee, agent, or independent contractor that occurs in the course of his or her employment, agency, or contract with the licensee shall be imputed to the licensee for the purpose of imposing any civil penalty, suspension, or revocation on the licensee.
- (f) The holder of a massage establishment business license that is the subject of revocation or suspension as stated herein and/or under RMC 4.04.160, shall be permitted to conduct business under the license until appeal has been pursued through final decision or the time for appeal has expired without pursuit of appeal. The failure to commence a timely appeal shall be deemed a waiver of any and all objections to revocation or suspension.

Sec. 5.23.080. Obtaining a license after revocation - Prohibition.

No massage establishment license shall be granted, and any existing massage establishment license may be revoked, limited or suspended, with respect to any person whose business license, massage establishment license, massage therapy license or other similar license was revoked, limited or suspended in any jurisdiction, for the period of two years following the date of such revocation or suspension.

Sec. 5.23.090. - reserved.

Sec. 5.23.100. - Responsibility of Licensee.

- (a) Any criminal conviction for pandering, prostitution or solicitation of prostitution on the licensed premises, whether such acts are committed by employees, independent contractors, subcontractors or patrons shall result in the revocation of licensing.
- (b) A massage establishment licensee shall not knowingly, or under circumstances that reasonably indicate such behavior is knowing or is willfully ignorant, negligent, or unaware, allow an employee or independent contractor to perform massage therapy on the licensee's premises who does not have a valid massage therapy license issued by the Board and a valid business license as required by title 4 and title 5.
- (c) A massage establishment license shall train their employees, and shall ensure their independent massage therapists have training, regarding how to address patrons who initiate, request or suggest sexual activity.
- (d) This section does not negate the imposition of other violations or responsibilities of licensee from other titles, chapters, and sections of this Code, or federal or state law.

Sec. 5.23.110. - Severability.

If any section, paragraph, phrase or word of this chapter or portion thereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining portions of this chapter.

SECTION 2. The Reno City Council hereby finds that this ordinance is subject to the requirements of NRS Chapter 237, Business Impact Statement process.

SECTION 3. This Ordinance shall be in effect after its passage, adoption and publication in one issue of a newspaper printed and published in the City of Reno.

SECTION 4. The City Clerk and Clerk of the City Council of the City of Reno is hereby authorized and directed to have this Ordinance published in one issue of the Reno-Gazette Journal, a newspaper printed and published in the City of Reno.

PASSED AND ADOPTED this ____ day of _____, 2020, by the following vote of the Council:

AYES: _____

NAYS: _____

ABSTAIN: _____ ABSENT: _____

APPROVED this ____ day of _____, 2020.

MAYOR OF THE CITY OF RENO

ATTEST:

CITY CLERK AND CLERK OF THE CITY COUNCIL
OF THE CITY OF RENO, NEVADA

EFFECTIVE DATE:

DRAFT