ARTICLE VIII.
MASSAGE ESTABLISHMENTS

Sec. 16A-160. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a person or persons who have applied for a massage establishment license.

Chair massage means a massage administered by a clothed massage therapist to the scalp, face, neck, shoulder, back area (above the waist), arm, hand, knee, leg (below the knee), ankle, or foot of another person, who is clothed, utilizing a massage chair.

Client means an individual who enters into an agreement for massage techniques for compensation of any kind within the city.

Clothed means fabric which is opaque and which completely covers a person from the base of the neck down to a point not to exceed four (4) inches above the center of the knee cap. Paint does not meet the definition of clothed.

Event massage means any event whereby the city has issued a special event permit pursuant to Tempe City Code, Chapter 5. Event massages shall be performed by a state licensed massage therapist who is clothed.

Licensee means a person in whose name a license to operate a massage establishment has been issued, as well as each individual listed as an applicant on the application for a license.

Licensing officer means finance and technology director or designee.

Massage establishment means any place of business, facility, premises, building, vehicle, place or location wherein any massage techniques are administered, practiced or used.

Massage techniques means any nonincidental touching, rubbing or other ministration of the human body including, though not expressly limited to, the following named subjects and methods of treatment: oil rubs; alcohol rubs; salt baths; touching procedures upon the external parts of the body by hand or any electrical, mechanical or vibratory apparatus, including stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage and tapotement. Massage techniques does not include the diagnosis of illness or disease, medical procedures, naturopathic manipulative medicine, osteopathic manipulative medicine, chiropractic adjustive procedures, hemopathic neuromuscular integration, electrical stimulation, ultrasound, prescription of medicines or

the use of modalities for which a license to practice medicine, chiropractic, nursing, occupational therapy, athletic training, physical therapy, acupuncture or podiatry is required by law.

Massage therapist means any person who, for compensation of any kind, performs any massage techniques as defined in this section and is licensed as a massage therapist by the State of Arizona.

Person means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, or any other form of legal entity.

Wellness program means an employer sponsored program that promotes wellness, healthcare or wellness and healthcare education to its employees.

Sec. 16A-161. Administration.

(a) The administration of this article, including the duty of prescribing forms, is vested in the licensing officer, except as otherwise specifically provided. The police chief and the community development director shall render assistance in the administration and enforcement of this article as follows:

(1) Police chief shall make police department facilities and personnel available to fingerprint an applicant for a license. The cost of fingerprinting shall be paid by the applicant at the time the service is provided. Records of fingerprints so obtained shall be maintained at the police department;

(2) Police chief shall have a criminal history inquiry conducted on all persons listed as an applicant or licensee in a license application. The inquiry shall be limited to determining whether an applicant for a license has a criminal conviction of the type described in § 16A-163(c)(9) of this article. The police chief shall notify the licensing officer in the event such criminal conviction is found to exist;

(3) Community development director shall notify the licensing officer whether an applicant or a licensee in a license application has failed to comply with or is in violation of applicable provisions of the Zoning and Development Code, building codes, development standards or other land use ordinances and regulations of the city relating to the business to be operated under the license; and

(4) Nothing herein is intended to prohibit or restrict the police chief or the community development director from providing additional assistance from their normal duties and responsibilities or as requested by the licensing officer.

(b) An application for a license or for the renewal of a license made pursuant to this article shall be submitted to the licensing officer who shall grant or deny the application in accordance with the provisions of this article. The licensing officer shall also suspend or revoke a license in accordance with the provisions of this article.

(c) A license issued pursuant to this article shall expire on December 31 of the year in and for which it is issued and may be renewed annually.

Sec. 16A-162. Exemptions.

A massage establishment license shall not be required for the following activities:

(1) The following persons while engaged in their respective professions or occupations for which they are licensed to practice or perform in Arizona, if they do not hold themselves out to the public as massage therapists and their performance of massage is only in connection with their profession or occupation:

a. Physicians, doctors of oriental medicine, surgeons, chiropractors, osteopaths or physical therapists, and persons directly under their control and supervision;

b. Registered nurses;

c. Barbers, hairdressers and cosmeticians; or

d. Reflexologists.

(2) Event massage;

(3) A client's temporary or permanent place of residence;

(4) Wellness programs; or

(5) Chair massages.

Sec. 16A-163. Application for a massage establishment license.

(a) A person who wishes to operate a massage establishment shall submit an application and fees for a license to the licensing officer as required by this article. The application shall be on a form prescribed by the licensing officer and obtainable from the licensing officer. An application shall be deemed filed with the city when the licensing officer has received the required fees, a completed application with all information required in subsection (c), and the fingerprints of each applicant.

(b) The applicants shall submit a full set of fingerprints to the police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the licensing officer.

(c) An applicant for a license under this article shall submit the following:

(1) The full legal name and current residence address of the applicant;

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

(3) Residence address for the past five (5) years;

(4) Written proof that the applicant is over the age of eighteen (18) years;

(5) The address at which the applicant desires to do business;

(6) The applicant's height, weight and hair and eye color;

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

(8) The business license history of the applicant; whether the applicant previously operating in this or another city or state under license has had such license suspended or revoked, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation; and

(9) All felony and misdemeanor convictions, excluding those for traffic offenses, and the grounds of such conviction, regardless of whether or not such convictions are being appealed.

Sec. 16A-164. Application and license fees.

(a) The application shall be submitted with an application fee and a license fee, as established by city council (Appendix A). The license fee shall be refunded upon denial of the license.

(b) The annual license renewal application shall be submitted with a nonrefundable license fee in the amounts established by city council (see Appendix A).

(c) Any person who wishes to renew a massage establishment license for the next year shall renew by December 31 of the current year. Any person who conducts activity covered by such license after that date shall be deemed operating without a license, and shall be subject to the late renewal penalty fee established by city council (see Appendix

A), in addition to the penalty provisions of § 16A-173.

(d) Renewal applications not received by January 31, will result in the termination of such license.

(e) Terminated licenses are not renewable and require a new application.

(f) All fees, including penalty fees, must be paid in full prior to license issuance.

Sec. 16A-165. Inspection of premises and records.

(a) No massage establishment license shall be issued unless the establishment complies with each and all of the following minimum requirements:

(1) Minimum lighting shall be provided in accordance with the Uniform Building Code and, in addition, at least one 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;

(2) Minimum ventilation shall be provided in accordance with the Uniform Building Code;

(3) Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any massage techniques;

(4) Closed cabinets shall be provided and used for storage of clean linens;

(5) Adequate dressing and toilet facilities shall be provided for patrons. A minimum of one dressing area, one toilet and one wash basin shall be provided for each massage establishment; provided, however, that if male and female patrons are to be served simultaneously at the establishment, a separate massage room or rooms and separate dressing areas shall be provided for male and female patrons;

(6) All walls, ceiling, floors, pools, showers, bathtubs, steam rooms and all other physical accommodations 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;

(7) Clean and sanitary towels shall be provided for each patron. The headrest of each table shall be provided with a clean and sanitary towel, paper towel or sheet for each patron;

(8) A minimum of one 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 techniques. In addition, there shall be provided at each wash basin sanitary towels placed in permanently installed dispensers; and

(9) Compliance with all applicable provisions of the city fire code shall be required.

(b) The licensee of a massage establishment shall maintain on the premises business records reflecting all receipts and expenditures with respect to the business for the preceding two (2) years. For purposes of ensuring ordinance compliance, law enforcement or other authorized officers or employees of the city shall be granted entry to inspect establishment areas open to the public and business records of any massage establishment at any time it is open for business. It is an offense and grounds for suspension or revocation for a licensee, employee or agent to refuse to permit an inspection as provided herein, in addition to the penalty provisions of § 16A-173.

(c) Every massage establishment shall keep and maintain a register of all licensed massage therapists which includes their full legal name, date of birth, home address, telephone number, employment position, date first began service and when terminated service, and their massage therapist's license number and date of expiration. This information shall be available for inspection by the licensing officer or designee.

Sec. 16A-166. Unlawful activities.

(a) It shall be unlawful for a person to operate a massage establishment without a valid license issued pursuant to this article.

(b) It shall be unlawful for a person to operate a massage establishment under any name or designation, or under any premises name or designation, or at any premises address not specified in a valid license issued pursuant to this article.

(c) It shall be unlawful for any operator of 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.

(d) A valid license for the massage establishment shall be displayed on the premises in such manner as to be readily visible to patrons.

(e) It shall be unlawful to practice or administer any massage techniques, whether for a fee or gratuity:

(1) In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires;

(2) To any other person whose genital organs, buttocks or female breast are not covered by opaque fabric;

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

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

(f) It shall be unlawful to practice or administer any massage techniques, whether for a fee or gratuity, without first obtaining and maintaining in effect a massage therapist license as required by the State of Arizona.

(g) It shall be unlawful for any massage establishment to conduct or operate on the same premises whereon is also conducted the business of a cocktail lounge, photography studio, model studio, art studio, telephone answering service, motion picture theater or adult-oriented business.

(h) It shall be unlawful to operate a massage establishment as a home occupation, per the Zoning and Development Code.

(i) It shall be unlawful for any massage establishment to provide services any time between the hours of 12:00 midnight and 6:00 a.m.

Sec. 16A-167. Non-transferability of license.

(a) Licenses issued under this article are not transferable.

(b) Upon the sale or transfer of any interest in a massage establishment, the license shall be null and void. A new application shall be submitted by any person desiring to own or to operate all or any portion of a massage establishment. The provisions of §§ 16A-165 and 16A-166 shall apply to any person applying for a massage establishment license for premises previously used as a massage establishment.

(c) 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 §§ 16A-165 and 16A-166.

Sec. 16A-168. Grounds for denial of license.

(a) The licensing officer shall not grant a license if:

(1) All requirements for the application have not been completed;

(2) The applicant is under eighteen (18) years of age;

(3) The applicant has failed to provide information reasonably necessary for issuance of the license, or has falsely answered a question or request for information on the application form;

(4) The applicant is a corporation which is not qualified to transact business in this state;

(5) The applicant is delinquent in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant, licensee or massage establishment or arising out of any other business activity owned or operated by the applicant, licensee or the massage establishment;

(6) The applicant or the massage establishment has failed to comply with or is in violation of applicable provisions of the zoning ordinances, or the building codes, or land use or other ordinances and regulations of the city relating to the business or activity to be conducted under the license;

(7) Within the past two (2) years, the applicant or the massage establishment has had a license under this article revoked, or a similar license in another jurisdiction has been revoked on the basis of conduct which would be a ground for revocation of a license issued under this article if committed in the city. The fact that the revocation is being appealed at the time of the decision on this application shall have no effect; or

(8) The applicant for massage establishment in the past five (5) years has been convicted of a misdemeanor involving moral turpitude or a felony. The fact that a conviction is being appealed shall have no effect;

(b) The licensing officer may deny an application for any reason pursuant to this article or for any violations pertaining to city, county, state and federal requirements; or

(c) Licenses shall not be issued until the applicant has complied with city, county, state and federal law.

Sec. 16A-169. Suspension or revocation.

(a) The licensing officer may suspend any license issued under this article for a specified period not to exceed sixty (60) days, or revoke such license, for any of the following reasons:

(1) Conviction of any felony involving dishonesty, deceit, theft, assaultive conduct or sexual misconduct;

(2) When the licensee has knowingly made any false or misleading statement in any report or record required to be made or kept under this article;

(3) Any other violation of this article, city code, state or federal law;

(4) Conducting business in an unlawful manner and in such a manner as to constitute a breach of the peace or constitute a menace to the health, safety or general welfare of the public;

(5) Any sexual act or engaging in sexual activity with a patron;

(6) Any nudity or exposure by the massage establishment personnel;

(7) Allowing a non-licensed individual to practice massage techniques within the licensed establishment; or

(8) The applicant is delinquent in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant, the licensee in relation to a massage establishment business or arising out of any other business activity owned or operated by the applicant.

(b) The city shall give written notice of the suspension or revocation to the licensee, which notice shall contain the reasons for the suspension or revocation and, if applicable, the length of the suspension. The notice shall be sent by certified mail to the address of the applicant or licensee listed in the current year's license application or renewal application, and the effective date of notice shall be the date the notice is actually received or five (5) business days after the date the notice is mailed, whichever occurs first.

Sec. 16A-170. Procedure for denial, suspension or revocation.

Applicants or licensees that wish to appeal the denial, suspension or revocation of a license are required to file such appeal to the hearing officer as follows:

(1) If the licensing officer determines that grounds exist to deny, suspend, or revoke an application or license the licensing officer shall notify the applicant or licensee in writing of the denial, suspension or revocation, which notice shall include a summary of the grounds therefor. The notice shall be sent by certified mail to the address of the applicant or licensee listed in the current year's license application or renewal application, and the effective date of notice shall be the date the notice is actually received or five (5) business days after the date the notice is mailed, whichever occurs first;

(2) Within ten (10) business days after the effective date of notice, the respondent may provide to the licensing officer in writing a response which shall include

a statement of reasons why the license or any renewal thereof, should not be denied, suspended, or revoked. If a response is not received by the licensing officer in the time stated, the denial, suspension or revocation shall be final and notice thereof shall be sent to the applicant or licensee by certified mail; and

(3) Within seven (7) business days after receipt of a response, the licensing officer shall schedule a hearing before the hearing officer as designated by the finance and technology director. The respondent shall be notified in writing by certified mail of the date, time and place of the hearing. The hearing shall be scheduled not less than fifteen (15) and no more than thirty (30) days after receipt by the licensing officer of the request for a hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence will not apply. The hearing officer shall render a written decision within five (5) business days after completion of the hearing and shall mail a copy of the decision by certified mail to the address specified by the respondent. In the case of a decision to deny, suspend or revoke a license, the licensee may continue to function under the license pending receipt of the final decision of the hearing officer. The decision shall be deemed final five (5) business days after it is mailed and shall constitute final administrative action.

Sec. 16A-171. Judicial appeal.

(a) After applicant has been denied and all administrative remedies have been exhausted, the applicant may file in the superior court, by special action or other available procedure, an appeal challenging the validity of the denial.

(b) In the event that a license is suspended or revoked, and all administrative remedies have been exhausted, the licensee may file in the superior court, by special action or other available procedure, an appeal challenging the validity of the suspension or revocation.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-172. Application after denial or revocation.

No person may apply for any massage establishment license within one year from the denial or revocation of any such license, unless the cause of such denial or revocation has been remedied to the satisfaction of the licensing officer.
(Ord. No. 2007.59, 10-4-07)

Sec. 16A-173. Penalty.

Violation of any requirement or prohibition stated in this article is a class 1 misdemeanor, punishable upon conviction as provided in § 1-7 of this code. With respect

to a violation that is continuous in nature, each day that the violation continues shall constitute a separate offense.

Sec. 16A-174. Other regulations applicable.

A license required by this article is in addition to any other licenses or permits required by the city, county, state, or federal government to engage in the business or occupation. Persons engaging in activities described in this article, shall comply with all other ordinances and laws, including the Zoning and Development Code, as may be required, to engage in the business or occupation.