

ORDINANCE NO. 2518

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 14 BUSINESSES, ARTICLE XI MASSAGE, BY AMENDING DIVISION 1 GENERALLY, SECTION 14-326 DEFINITIONS; SECTION 14-329 PROHIBITED HOURS OF OPERATION; AND SECTION 14-330 PROHIBITED ACTS; AND DIVISION 2, LICENSES, SECTION 14-351 TYPES REQUIRED; SECTION 14-352 APPLICATION; CONTENTS; SECTION 14-354 MASSAGE THERAPY ESTABLISHMENT LICENSE; SPECIAL REQUIREMENTS; SECTION 14-355 MASSAGE THERAPIST LICENSE; STATE LICENSE REQUIRED; AND SECTION 14-359 DENIAL OR REVOCATION OR SUSPENSION OF LICENSE; APPEAL; INTERIM LICENSE; REAPPLICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

WHEREAS, Gilbert encourages the development and growth of businesses; and

WHEREAS, Gilbert wishes to enhance the professionalism of the massage service industry as well as protect the health and safety of the public; and

WHEREAS, Gilbert wishes to assure the integrity of the massage service industry by reducing unprofessional practices by massage establishments and massage therapists;

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, Chapter 14 Businesses, Article XI Massage, Division 1 Generally, Section 14-326 Definitions, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 14-326. 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:

BODYWORK THERAPY MEANS MASSAGE THERAPY.

Massage therapist means a person licensed under A.R.S. § 32-4201 et seq. To engage in the practice of massage therapy.

Massage therapy means the following that are undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement or provide general or specific therapeutic benefits:

- (1) The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head.
- (2) The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees, feet or handheld mechanical or electrical devices.
- (3) Any combination of range of motion, directed, assisted or passive movements of the joints.
- (4) Hydrotherapy, including the therapeutic applications of water, heat, cold, wraps, essential oils, skin brushing, salt glows and similar applications of products to the skin.

Practice of massage therapy means the application of massage therapy to any person for a fee or other consideration. Practice of massage therapy does not include the diagnosis of illness or disease, medical procedures, naturopathic manipulative medicine, osteopathic manipulative medicine, chiropractic adjustive procedures, homeopathic neuromuscular integration, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, nursing, ~~physical~~ OCCUPATIONAL therapy, acupuncture or podiatry is required by law.

Massage therapy establishment means any place of business or establishment, INCLUDING A PLACE OF BUSINESS OR ESTABLISHMENT LOCATED WITHIN ANOTHER PLACE OF BUSINESS OR ESTABLISHMENT, wherein the practice of massage therapy is conducted for a fee or other consideration.

PRIVATE ANATOMICAL AREAS MEANS THE GENITALS, PERINEUM, AND ANAL REGION OF ANY PERSON AND THE AREA OF THE BREAST THAT INCLUDES THE AREOLA AND THE NIPPLE OF ANY FEMALE PERSON.

The Code of Gilbert, Arizona, Chapter 14 Businesses, Article XI Massage, Division 1 Generally, Section 14-329 Prohibited hours of operation, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 14-329. Prohibited hours of operation.

It shall be unlawful for any massage establishment to remain open for business or provide services any time between the hours of ~~12:00-midnight~~ 10:30 P.M. and 6:00 a.m.

The Code of Gilbert, Arizona, Chapter 14 Businesses, Article XI Massage, Division 1 Generally, Section 14-330 Prohibited acts, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 14-330. Prohibited acts.

It is unlawful:

(1) For any person to conduct or operate a massage establishment on the same premises whereon is also conducted the business OF A SEXUALLY ORIENTED BUSINESS AS DEFINED BY CHAPTER 14, ARTICLE XII, cocktail lounge, photography studio, model studio, art studio, telephone answering service, motion picture theater or bookstore.

(2) For any massage therapist to practice or administer any massage therapy, whether for a fee or other consideration:

a. In a manner or under circumstances intended to arouse, appeal to, or gratify sexual desires;

b. To any other person whose private parts, including genital organs or buttocks are not covered by opaque material; ~~or~~

c. WHILE CLOTHED IN A MANNER THAT FAILS TO COVER PRIVATE ANATOMICAL AREAS WITH OPAQUE MATERIAL;

d. THAT in any way touchES the genitals of the individual receiving the treatment.

(3) For any massage therapist to provide to any person at any time service which is dangerous to health or safety.

(4) For any massage establishment to allow consumption of spirituous liquor or illegal drugs on the premises of the business, and for any person to consume spirituous liquor or illegal drugs on the premises of the business.

(5) FOR ANY PERSON TO FAIL OR REFUSE TO PERMIT A LAWFUL INSPECTION IMMEDIATELY UPON REQUEST.

(6) FOR ANY MASSAGE THERAPY ESTABLISHMENT TO PERMIT MASSAGE THERAPY BEHIND A LOCKED DOOR.

(7) FOR ANY PERSON ON THE PREMISES OF A MASSAGE ESTABLISHMENT TO INTENTIONALLY VIEW A COMPLETELY OR PARTIALLY DISROBED MASSAGE ESTABLISHMENT CLIENT IF THE VIEWING IS NOT RELATED TO TREATMENT UNDER CURRENT PRACTICE STANDARDS AND IS INTENDED TO APPEAL TO THE PRURIENT INTEREST OF THE MASSAGE THERAPIST OR THE MASSAGE ESTABLISHMENT CLIENT.

(8) FOR ANY PERSON, WHILE ON THE PREMISES OF A MASSAGE ESTABLISHMENT, TO KNOWINGLY ASK OR DIRECT A PERSON TO:

A. TOUCH HIS OWN ANUS OR GENITALS.

B. TOUCH THE ANUS OR GENITALS OF ANY PERSON ON THE PREMISES OR THE BREASTS OF ANY FEMALE PERSON WITHOUT COMPLYING WITH THE PROVISIONS OF A.R.S. 32-4253(B)(2)(E) ON THE PREMISES.

C. EXPOSE HIS GENITALS OR ANUS TO ANY PERSON ON THE PREMISES WITH THE INTENTION OF APPEALING TO THE PRURIENT INTEREST OF THE MASSAGE PRACTITIONER OR THE MASSAGE ESTABLISHMENT CLIENT.

(9) FOR ANY PERSON, WHILE ON THE PREMISES OF A MASSAGE ESTABLISHMENT, TO KNOWINGLY PLACE ANY PART OF THE BODY OF A PERSON IN DIRECT OR INDIRECT CONTACT WITH THE ANUS OR GENITALS OF ANY OTHER PERSON ON THE PREMISES OR THE BREASTS OF ANY FEMALE PERSON WITHOUT COMPLYING WITH THE PROVISIONS OF A.R.S. 32-4253(B)(2)(E) ON THE PREMISES.

(10) 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.

(11) 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. THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO THE PERSONS MEETING THE CRITERIA FOR EXEMPTIONS AS DEFINED IN THIS CHAPTER.

The Code of Gilbert, Arizona, Chapter 14 Businesses, Article XI Massage, Division 2 Licenses, Section 14-351 Types required, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 14-351. Types required.

- (a) Massage therapy establishments. It shall be unlawful for any person to conduct or operate a massage establishment without first obtaining and maintaining in effect a massage therapy establishment license.
- (b) Employers of massage therapists. It shall be unlawful for any person to employ as a massage therapist any person who does not hold a current unrevoked and unsuspended massage therapist license as required by section 14-355.
- (c) Practice limited to license specifications. It shall be unlawful for any person licensed as provided in this section to operate under any name or conduct business under any designation OR AT ANY LOCATION not specified in such license.

The Code of Gilbert, Arizona, Chapter 14 Businesses, Article XI Massage, Division 2 Licenses, Section 14-352 Application; contents, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 14-352. Application; contents.

- (a) A person desiring to obtain a massage establishment license shall make application to the development services manager, who shall refer such application to the police department FOR AN APPROPRIATE INVESTIGATION to conduct a local records check through its records section to determine if the applicant has had any contact with the police department. UPON SUBMISSION OF AN

APPLICATION, EACH APPLICANT SHALL PAY A NONREFUNDABLE FEE TO COVER THE COSTS OF THE RECORDS CHECK.

(b) In addition to requirements set forth in section 14-38, an applicant for a massage establishment license shall submit the following:

- (1) All personal information required by subsection 14-38(d).
- (2) The two residence addresses immediately prior to the present address of the applicant, and the dates of residence at each.
- (3) Written proof that the applicant is over the age of ~~24~~ 18 years if ~~applying for a massage establishment license.~~
- (4) The massage therapist license history of the applicant: whether the applicant, in previously operating in this or another city or state under a license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation.
- (5) All felony convictions FOR THE PREVIOUS FIVE YEARS and misdemeanor convictions INVOLVING CRIMES OF MORAL TURPITUDE FOR THE PREVIOUS TWO YEARS, excluding those for traffic offenses, and the grounds of such convictions.
- (6) A list (log) of all employees AND INDEPENDENT CONTRACTORS at the massage therapy establishment, including the ~~employee's~~ full legal name, date of birth, home address and telephone number, employment position, and the license number and license expiration date for each massage therapist. An applicant shall provide such other identification and information as the development services manager may require to aid in verifying the application.
- (7) The applicant's education, training, and experience in the administration, practice or use of massage therapy.

~~(c) — A person desiring to obtain a massage therapy establishment license shall submit the application to the development services manager, who shall refer such application to the police department for appropriate investigation. In addition to requirements set forth in section 14-38 an application for a massage therapy establishment license shall submit the following:~~

~~(1) All personal information required by subsection 14-38(d).~~

~~(2)~~(8) Massage therapy establishment license history of the applicant: whether the applicant, in previously operating in this or another city or state under a license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation.

The Code of Gilbert, Arizona, Chapter 14 Businesses, Article XI Massage, Division 2 Licenses, Section 14-354 Massage therapy establishment license; special requirements, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 14-354. Massage therapy establishment license; special requirements.

(a) No massage therapy establishment license shall be issued or renewed unless inspection by the fire department indicates the site of the proposed establishment complies with all the applicable provisions of the fire code.

(b) No massage therapy establishment license shall be issued or renewed unless inspection by the building and code compliance department indicates that the site of the proposed establishment complies with each and all of the following minimum requirements:

(1) Minimum lighting shall be provided in accordance with the town building code and, in addition, at least one artificial light of not less than 40 watts shall be provided in each room or enclosure where massage or touching techniques 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 town building code.

(3) Hot and cold running water shall be available in the establishment.

(4) Closed cabinets shall be provided for the storage of clean linens.

(5) A minimum of one dressing room for each patron to be served, and a minimum of one toilet and one washbasin shall be provided by each massage therapy establishment; provided, however, that if more than one patron will be served simultaneously at the establishment, a separate massage room is required for each patron served simultaneously, and

separate dressing and toilet facilities shall be provided for male and female patrons.

(6) A minimum of one separate washbasin shall be provided in each massage therapy 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 or touching techniques. In addition, there will be provided at each washbasin, sanitary towels placed in permanently installed dispensers.

(7) Compliance with all applicable provisions of the town building code is required.

(c) No massage therapy establishment license shall be issued or renewed if the applicant has been convicted within the last five years of any felony ~~involving moral turpitude~~, or has been convicted within the last two years of any misdemeanor involving moral turpitude.

(d) No massage therapy establishment license shall be issued to an applicant who is less than 18 years of age.

(e) A massage therapy establishment licensee shall maintain at the massage therapy establishment a current log of all employees AND INDEPENDENT CONTRACTORS at the massage establishment, including:

(1) ~~Each employee's~~ THE 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

(2) Each massage therapist's license number and date of expiration of license.

(3) The ~~employee~~ log shall at all times reflect the names of ~~employees~~ for the previous one year. Wherever the ~~employee~~ log is located, the ~~employee~~ log shall be subject to inspection upon request, during normal business hours. A massage therapy establishment licensee shall maintain at the massage therapy 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, name and address of the client, and name of the ~~employee~~ massage therapist administering the massage therapy. ~~The massage therapy log shall be subject to inspection upon request, during normal business hours.~~

(F) AN APPLICANT FOR A MASSAGE ESTABLISHMENT LICENSE, A CONTROLLING PERSON OR A DESIGNATED AGENT FOR A LICENSEE, A MANAGER, OR A LICENSEE SHALL PERMIT REPRESENTATIVES OF THE POLICE DEPARTMENT, TOWN DEPARTMENTS, AND ANY OTHER FEDERAL, STATE, COUNTY AGENCY IN THE PERFORMANCE OF ANY FUNCTION CONNECTED WITH THE ENFORCEMENT OF ANY CODE, STATUTE OR REGULATION RELATING TO HUMAN HEALTH, SAFETY OR WELFARE OR STRUCTURAL SAFETY, NORMALLY AND REGULARLY CONDUCTED BY SUCH AGENCY, TO INSPECT THE PREMISES OF A MASSAGE ESTABLISHMENT FOR THE PURPOSE OF ENSURING COMPLIANCE WITH THE LAW, AT ANY TIME IT IS LAWFULLY OCCUPIED OR OPEN FOR BUSINESS. IT IS A CRIMINAL OFFENSE AS PROVIDED IN THIS CHAPTER AS WELL AS GROUNDS FOR SUSPENSION OR REVOCATION FOR A LICENSEE, EMPLOYEE, OR AGENT TO REFUSE TO PERMIT AN INSPECTION OF THE PREMISES OR RECORDS AS PROVIDED HEREIN.

The Code of Gilbert, Arizona, Chapter 14 Businesses, Article XI Massage, Division 2 Licenses, Section 14-355 Massage therapist license; state license required, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 14-355. Massage therapist license; state license required.

It shall be unlawful to practice massage therapy in the town without a valid license issued by the State of Arizona pursuant to A.R.S. § 32-4221. HOLDING A MASSAGE THERAPIST LICENSE DOES NOT AUTHORIZE THE OPERATION OF A MASSAGE ESTABLISHMENT.

The Code of Gilbert, Arizona, Chapter 14 Businesses, Article XI Massage, Division 2 Licenses, Section 14-359 Massage therapist license; state license required, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 14-359. Denial or revocation or suspension of license; appeal; interim license; REAPPLICATION.

(a) The license of the massage therapy establishment may be denied, revoked, or suspended upon any one or more of the following grounds:

- (1) Any of the grounds specified in section 14-44.

(2) The person conducting or operating the massage therapy establishment has been convicted of a felony IN THE PAST FIVE YEARS or a misdemeanor involving moral turpitude, OR IS in violation of sections 14-354 or 14-355.

(3) The person conducting or operating the massage therapy establishment is guilty of untrue, fraudulent, misleading, or deceptive advertising INCLUDING A VIOLATION OF A.R.S. § 32-4260.

(4) The person conducting or operating the massage therapy establishment is engaged in the business under a false or assumed name or is impersonating another practitioner.

(B) THE ESTABLISHMENT LICENSE SHALL BE DENIED IF ANY OF THE FOLLOWING PERSONS WOULD BE DISQUALIFIED UNDER THIS TITLE:

(1) THE PRESIDENT OR OTHER EXECUTIVE OFFICERS OF A CORPORATE APPLICANT;

(2) EACH GENERAL PARTNER OF AN APPLICANT THAT IS A LIMITED PARTNERSHIP OR ANY PARTNER OF A NON-LIMITED PARTNERSHIP APPLICANT;

(3) THE MANAGING MEMBER(S) OR OFFICER(S) OF THE APPLICANT;

(4) ANY CONTROLLING PERSON OF THE APPLICANT;

(5) SOLE PROPRIETOR.

~~(b)~~(C) The development services manager may deny, suspend, revoke, or deny renewal of a license required under section 14-351 following notice and a hearing as set forth in section 14-44. Appeals and grant of an interim license pending the final outcome of an appeal are governed by section 14-45 through 14-46. RE-APPLICATION FOR A LICENSE IS GOVERNED BY SECTION 14-47.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

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

Section IV. Providing for Penalties.

Any person found guilty of violating any provision of this Ordinance shall be guilty of a Class One misdemeanor, and upon conviction thereof shall be punishable by a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500) or by imprisonment for a period not to exceed six (6) months, or both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein described.

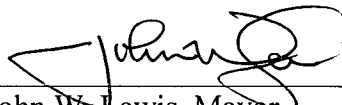
PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 18th day of December, 2014, by the following vote:

AYES: Cook, Cooper, Daniels, Lewis, Petersen, Ray, TAYlor

NAYES: none ABSENT: none

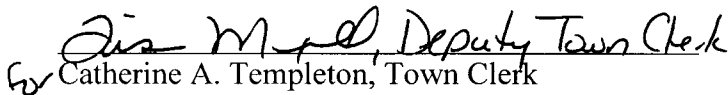
EXCUSED: none ABSTAINED: none

APPROVED this 18TH day of DECEMBER, 2014.

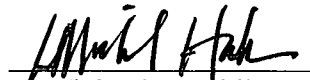


John W. Lewis, Mayor

ATTEST:

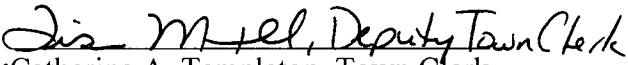

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:



L. Michael Hamblin
Town Attorney

I, CATHERINE A. TEMPLETON, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2518 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 18TH DAY OF DECEMBER, 2014, WAS POSTED IN FOUR PLACES ON THE 23rd DAY OF DECEMBER, 2014.


Catherine A. Templeton, Town Clerk