

ORDINANCE NO. 3301  
(Repeal and Establish Henderson Municipal Code Chapter 4.84 - Massage Establishments  
and Independent Massage Therapists)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON,  
NEVADA, TO REPEAL IN ITS ENTIRETY AND ESTABLISH A NEW  
CHAPTER 4.84 - MASSAGE ESTABLISHMENTS AND INDEPENDENT  
MASSAGE THERAPISTS – OF THE HENDERSON MUNICIPAL CODE AND  
MATTERS PROPERLY RELATED THERETO.

- WHEREAS, Ordinance 2844 was adopted on January 19, 2010; and
- WHEREAS, Ordinance 2947 was adopted on December 6, 2011; and
- WHEREAS, except as otherwise provided herein, all massage establishments and independent massage therapists licensed on the date of passage of the ordinance codified in this section that do not meet the operating requirements or facility requirements in accordance with this chapter shall have 21 days from the date of passage of this chapter to comply with the requirements of this chapter; and
- WHEREAS, all massage establishments and independent massage therapists that are not licensed in accordance with this chapter shall have 60 days from the date of passage of this chapter to submit to the division: (1) all necessary applications for licensure; and (2) all necessary applications for a manager in charge approval letter, as set forth in HMC 4.84.090; and

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

- SECTION 1. The moratorium imposed on May 19, 2015, by Resolution No. 4188 and extended by City Council action on September 15, 2015, is of no further force or effect with respect to Henderson Municipal Code 4.84.
- SECTION 2. Chapter 4.84 – Massage Establishments and Independent Massage Therapists - is hereby repealed in its entirety.
- SECTION 3. Chapter 4.84 – Massage Establishments and Independent Massage Therapists - is hereby established as follows:

Sections:

- 4.84.010 Definitions.
- 4.84.020 Statement of legislative intent - Regulation.
- 4.84.030 Unlawful to operate without license - Outside jurisdiction - Separate license required.
- 4.84.040 License - Location subject to use permit application review.
- 4.84.050 Exemptions - Specified.
- 4.84.060 Massage establishment licensee - Employees.
- 4.84.070 License - Application.
- 4.84.075 Investigation fees - Required fees.
- 4.84.080 Advertising.

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4.84.090      Massage establishment - Where operated—Operating requirements.

4.84.100      Independent massage therapist - Authorizations and requirements.

4.84.110      License - Changes in ownership.

4.84.120      License issuance.

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4.84.180      Disciplinary action - License suspension, revocation or limitation.

4.84.190      Obtaining a license after revocation - Prohibition.

4.84.200      Enforcement authority.

4.84.010      Definitions.

The following definitions are in addition to the definitions set forth in chapter 4.04 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:

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 Therapists.

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.

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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.

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 NRS 640C.060(1), and for 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. Reflexology, when performed in accordance with the regulations of chapter 4.85, is excluded from this definition.

Massage establishment means any 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 so comply, the term shall include the owners, managers, members, partners, directors, or shareholders of the business entity operating as a massage establishment.

Massage therapist means any person who is licensed pursuant to the provisions of NRS Chapter 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.

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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.

Sexual activity means:

1. Sexual intercourse;
2. Examining or touching any specified anatomical area of a patron;
3. Rubbing against a patron for sexual gratification;
4. Kissing;
5. Hugging, touching, fondling or caressing of a romantic or sexual nature;
6. Not providing a patron privacy to dress or undress except as may be necessary in a medical emergency;
7. Not providing a patron a gown or draping except as may be necessary in a medical emergency;
8. Removing the patron's clothing or gown or draping without consent, except as may be necessary in a medical emergency;
9. Encouraging masturbation or any other sex act in the presence of a massage therapist or employee;
10. Dressing or undressing in the presence of the patron;
11. Masturbation or any other sex act by the massage therapist or any employee in the presence of the patron;
12. Discussing the sexual history, preference or fantasies of the massage therapist or employee;
13. Any behavior, gesture or expression that may reasonably be interpreted as seductive or sexual;
14. Making statements regarding the patron's body, appearance, sexual history or sexual orientation other than for legitimate health care purposes;
15. Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patron;
16. Photographing or filming the body or any body part of a patron; or
17. Showing a patron sexually explicit photographs or video.

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

4.84.020 Statement of legislative intent—Regulation.

It is found and declared that the public health, safety, morals and 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, morals, 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 or business by an independent massage therapist, when authorized by such license, 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.

4.84.030 Unlawful to operate without license—Outside jurisdiction—Separate license required.

A. It is unlawful for any person to operate a massage establishment or provide services as an independent massage therapist in the city without obtaining a massage establishment or independent massage therapist license and paying all fees in connection therewith as set forth in chapter 4.05.

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 Chapter 640C.

C. Any independent massage therapist who is based in any jurisdiction in Clark County, Nevada, other than the city and that wishes to come into the city to perform massage therapy, including chair massage, must first be licensed as a massage therapist by the Board pursuant to NRS Chapter 640C and must also obtain an independent massage therapist license from the city in accordance with this chapter.

D. Massage businesses that are based in any jurisdiction in Clark County, Nevada, other than the city and who wish to send massage therapists into the city to perform massage therapy, including chair massage, must first obtain a city massage establishment license in accordance with this chapter.

E. Any owner of a massage establishment who wishes to engage in the occupation of massage must have a valid, unexpired license from the Board in addition to the massage establishment license required pursuant to this chapter.

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F. It is unlawful for a massage establishment or manager in charge of a massage establishment to allow massage therapy to be performed at the massage establishment by a person not licensed as a massage therapist.

4.84.040 License—Location subject to use permit application review.

All license applicants for massage establishments that will be located within the city shall submit to the community development and services department an application, in the manner specified by that department, for a conditional use permit in accordance with title 19 of the development code. Disciplinary actions imposed under this chapter 4.84 or other chapters of this title that apply to massage establishments may result in revocation of the conditional use permit.

4.84.050 Exemptions—Specified.

The provisions of this chapter shall not apply to persons specified in NRS 640C.100(1), so long as the activities or services are provided in connection with the practice for which the person is licensed, certified or registered.

4.84.060 Massage establishment licensee—Employees.

A. Each massage establishment shall be operated under the lawful control of a manager in charge as defined in section 4.84.090.

B. Every massage establishment and manager in charge shall be responsible for the conduct of the massage establishment's employees, agents, representatives, or other persons who are on the premises of the massage establishment regardless of whether such person is providing massage therapy. The massage establishment and manager in charge shall be subject to disciplinary action including civil penalties and criminal citations, and the massage establishment license shall be subject to suspension, limitation or revocation, based upon such conduct, regardless of any actual or constructive knowledge of the conduct by the massage establishment or manager in charge. In any license suspension, limitation, or revocation proceedings, the fact that the massage establishment did not have actual knowledge of the events complained of shall be no defense and every massage establishment accepts its license subject to said condition.

C. Any massage establishment that contracts or otherwise affiliates with an independent massage therapist for the purpose of performing massage shall be jointly responsible for the conduct and business operations of the independent massage therapist. Any misconduct by the independent massage therapist shall be attributable to both the independent massage therapist and the massage establishment and shall subject the massage establishment,

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independent massage therapist and manager in charge to disciplinary action including notices of violation, civil penalties and criminal citations, and shall subject the massage establishment license and independent massage therapist license to suspension, limitation or revocation based upon the conduct of the independent massage therapist, regardless of any actual or constructive knowledge of the conduct by the massage establishment or manager in charge. In any license suspension, limitation, or revocation proceedings, the fact that the massage establishment did not have actual knowledge of the events complained of shall be no defense and every massage establishment accepts its license subject to said condition.

D. Massage establishments 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.

4.84.070 License—Application.

Whenever a person desires to conduct any business in the city, as a massage establishment or as an independent massage therapist, such person shall file a business license application in writing with the division on a form to be furnished by the division, along with the application fee as provided in section 4.04.065 and the license fee as provided in chapter 4.05.

4.84.075 Investigation fees – Required fees.

Any person applying for a massage establishment license is required to submit to the city an investigation fee as set forth in chapter 4.03, for each person required to be investigated. Persons who are required to be investigated include, without limitation, owners, managers in charge, officers, directors, managers, members, and partners.

4.84.080 Advertising.

A. No person shall advertise that such person provides massage therapy services in the city unless, in the case of a natural person, the person is licensed to practice massage therapy by the Board, and in the case of a business, such business is a licensed massage establishment. No person shall advertise that massage therapy services are provided at a business located within the city unless the business has been issued a conditional use permit allowing for massage therapy to be performed at the business location and such permit has not been suspended or revoked.

B. No massage establishment or massage therapist shall place, publish or distribute or cause to be placed, published or distributed any advertisement,

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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.

C. 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.

D. In the event a massage establishment or its manager in charge 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 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.

E. Two or more violations of section 4.84.080 within a six (6) month period may subject the massage establishment license to suspension, limitation or revocation pursuant to chapter 4.06, and the massage establishment, manager in charge, massage therapist or other party responsible for the advertising, to disciplinary action as set forth in chapter 4.07.

4.84.090      Massage establishment—Where operated—Operating requirements.

A. A massage establishment license allows the conduct of massage services only in a properly zoned commercial area within the city, in accordance with any conditions required by the conditional use permit issued to that location. A massage establishment license and conditional use permit are required when a massage establishment is operated in 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. A person designated as the manager in charge shall be on the premises at all times of operation. The manager in charge shall be responsible



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for accepting citations, written correspondence, and any other communication from the city. 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 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 be required to obtain an approval letter issued by the division, which shall not be issued until the person meets the following minimum requirements, to the satisfaction of the director:

- a. The manager in charge shall be at least eighteen (18) years old;
  - b. The manager in charge shall be a citizen of the United States or a non-citizen eligible to work in the United States, with proper documentation of same;
  - c. The manager in charge shall not be a registered sex offender or required by law to register as a sex offender;
  - d. The manager in charge shall not, within ten (10) years before requesting an approval letter, be convicted of (or plead nolo contendere to) an offense involving sexual misconduct with a child, including sexual abuse, sexual assault, sexual conduct, sexual molestation and sexual exploitation;
  - e. The manager in charge shall not, within ten (10) years before requesting an approval letter, be convicted of (or plead nolo contendere to) prostitution or of operating a prostitution enterprise;
  - f. The manager in charge shall not, within ten (10) years before requesting an approval letter, be convicted of (or plead nolo contendere to) a felony or crime of moral turpitude not otherwise specified herein; and
  - g. The record of the manager in charge shall be free of all reasons to deny an application or suspend, limit or revoke a license under this section, section 4.04.150, and section 4.84.180 of this title.
2. A list of services available and the cost of each service shall be made available to all patrons and must be posted and visible in an open public place within the massage establishment, and shall be written in English.
3. 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 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 division, code enforcement, police department or

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state or county regulatory agencies at all times the establishment is open for the conduct of business.

4. Each 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 the treatment room or any other room used by patrons or potential patrons.

6. No massage establishment shall be equipped with tinted or two-way mirrors in any room accessible to patrons.

7. 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. Tint shall be no lower than 50% with a maximum of 10% exterior reflectance not including the glass.

8. All front reception, hallway and front exterior doors (except back or rear exterior doors used only for employee entrance to and exit from the massage establishment and patron restrooms when in use by a patron) shall be kept unlocked during business hours. No massage may be given within any cubicle, room, booth or any area within the massage establishment that is fitted with a door capable of being locked, unless that door is an exterior door. No electronic, automatic combination or other locking device may be utilized on any interior door which is required to be locked.

9. No person shall operate a massage establishment, perform outcall massage service, or administer a massage for money or any other consideration between the hours of 10:00 p.m. and 8:00 a.m.

10. No massages shall be performed in any room where table showers or shower apparatus are located.

11. Each room in which massage therapy will be performed must have lighting fixtures which are capable of providing a minimum of 5 foot-candles of light at the floor level.

12. A massage establishment shall be responsible for ensuring that it remains closed to the public, with no signage indicating the massage establishment is open for any purpose, if at any time an appropriately licensed massage therapist is not on the premises to perform massage therapy.

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13. All massage therapists, employees and managers in charge shall, at all times while working in a massage establishment or providing massage therapy services, carry on their person or otherwise have present at the location where they are working or providing massage services, government-issued identification. It shall be unlawful for any employee, independent massage therapist or manager in charge to refuse to, or otherwise fail to, present his or her identification to agents or officers of the division, code enforcement, police department or state or county regulatory agencies if he or she is asked to do so during business hours.

14. Every massage establishment shall post a copy of the license required by this chapter in a prominent place in the reception area of the establishment.

15. No person shall perform outcall massage at a commercial location if the commercial location is required to have a massage establishment license, but does not have a massage establishment license.

C. If agents or officers of the 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 4.84.090, the agent or officer may take action as described in section 4.84.200 of this chapter.

4.84.100 Independent massage therapist—Authorizations and requirements.

A. An independent massage therapist license authorizes the licensee to:

1. Perform massage therapy in a leased or rented room in a licensed massage establishment;

2. Perform outcall massage therapy from his or her residence in the city after obtaining a home occupation permit in accordance with title 19 of the development code provided that no massage therapy is performed in the residence; 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 if the commercial location is licensed as a massage establishment and has received a conditional use permit allowing massage therapy at that location.

C. If the commercial location is not licensed as a massage establishment or does not have a conditional use permit allowing massage therapy at that location, the independent massage therapist shall be required to obtain the

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massage establishment license and/or conditional use permit prior to providing massage therapy at the commercial location.

4.84.110 License—Changes in ownership.

In the case of a corporation, partnership, association, limited liability company, or any other form of ownership other than a sole proprietor, any and all changes in the officers, managers, members, partners or directors of such legal entity shall be reported to the division within 30 days of the change. Any new officers, managers, partners, associate members or directors shall be required to pass an investigation and pay the fees required by chapter 4.03. Failure of any of the aforementioned persons to pass investigation or pay the required fees may result in revocation, limitation or suspension of the massage establishment license.

4.84.120 License issuance.

A. Upon receipt of the results of the background investigation required by 4.84.075 from the police department, the director will make a determination on the finding of suitability. The division will submit its recommendation for approval or denial of the application for a massage establishment license to the city council for consideration. All license applicants shall be required to appear before the city council at the time the city council considers whether to approve or deny the license in order to verify the applicant's willingness to abide by the provisions of this chapter. If the application is approved by the city council, the division may be directed to issue the license; provided, however, that all other conditions, restrictions, payment of fees, and compliance with all applicable state statutes and city ordinances have been met.

B. Upon receipt of a complete application for an independent massage therapist license, the division shall issue the license; provided that all other conditions, restrictions, payment of fees, and compliance with all applicable state statutes and city ordinances have been met.

4.84.130 Reserved.

4.84.140 Clothing requirements.

A. Each massage establishment shall comply with regulations relating to sanitation, hygiene and safety adopted by the Board pursuant to NRS 640C.320.

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B. All massage establishments shall ensure that all employees, independent contractors, agents or representatives are completely clothed at all times while on the premises of a massage establishment, regardless of whether such person is providing massage therapy services. Outer garments must be clean, must not be torn, must be made of a fully-opaque material, and must be in good repair.

C. For purposes of this subsection, the term "completely clothed" means:

1. With respect to the upper body:

a. For women, wearing undergarments;

b. For men and women, wearing either a blouse or shirt with sleeves and which shall cover the entire torso from the neck to the waist.

2. With respect to the lower body for both men and women, wearing appropriate undergarments plus either pants or a skirt that must cover from the waist down to a point at least two inches above the knee.

3. Undergarments shall not be exposed to a patron or other person on the premises of a massage establishment at any time.

4.84.150 Unlawful acts.

It is unlawful for:

A. Any massage establishment, manager in charge or person acting for the massage establishment, to employ, in any capacity, any person who is not at least 18 years of age;

B. Any person licensed under this chapter to operate under any name or conduct business under any designation not specified in such license or to engage in the business of operating a massage establishment under a false or assumed name when the use of such false or assumed name is not otherwise permitted by law, or is impersonating another practitioner of a like or different name;

C. Any massage therapist or employee to expose his or her genitals, buttocks, chest or breasts, or make any intentional, occasional or repetitive contact with a patron's specified anatomical areas;

D. Any massage establishment owner, massage therapist or employee to be present in any room with a patron unless the patron's specified anatomical areas are fully covered;

E. Any massage establishment, massage therapist, employee, agent, representative or patron to engage in or solicit sexual activity from any person, at any time within a massage establishment. These acts are unlawful if they

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occur at any time within a massage establishment, regardless of whether the activity occurs during the course of a massage and regardless of whether the person consents. It shall also be a violation if the massage establishment, employee, agent, massage therapist, or representative, initiates sexual activity with or encourages sexual activity from the person regardless of whether the sexual activity actually occurs.

F. Any person to possess or consume any alcoholic beverages on the premises of any massage establishment.

G. Any gaming as defined in this title to occur on the premises wherein the business of massage is conducted.

H. A massage establishment to employ any person who is not legally qualified to work in the United States.

I. Any individual that is not a patron, employee, or massage therapist of the massage establishment to be present in any area of the massage establishment identified as, or designated for, employees only or intended for patron services during operating hours.

J. Reserved.

K. Any massage establishment, employee, or independent massage therapist, or other person to use the massage establishment premises as a residence or sleeping quarters.

L. Any massage establishment, employee, independent contractor, or other person acting on behalf of any of the foregoing to fail to allow any agents or officers of the division, code enforcement, police department or state or county regulatory agencies access to the premises for administrative inspections or to hinder such representative while performing such inspection.

M. Any massage establishment owner or manager in charge to fail to report to the division any arrest that occurs on the premises of the massage establishment of which it has actual or constructive knowledge, within three calendar days of the arrest, regardless of whether the person arrested is an employee, patron or independent massage therapist, if the arrest is related to activities that occurred on the premises of the massage establishment.

N. Subsections F and G shall not apply in cases where the massage establishment is located within a facility such as, but not limited to a hotel, resort hotel, athletic club, etc. and where gaming or alcohol is legally permitted. In such cases, the prohibition of alcoholic beverages and gaming shall only apply to the area of the facility dedicated to the use of the massage establishment.

4.84.160 Sale or transfer or change of location.

A. No license for an independent massage therapist may be sold or transferred. This subsection is not intended to prohibit the sale of client lists of a massage therapist.

B. No independent massage therapist may relocate to another location within the city without first applying for a change of location with the division and receiving all necessary approvals. The new location must have a conditional use permit issued from the community development and services department allowing for massage therapy to be provided at that location.

C. No massage establishment licensee shall move the business to a place other than the location stated on the massage establishment license, or conduct business at any location other than the location stated on the massage establishment license and conditional use permit. A change of location application must be made to the division by the owner of any massage establishment who wishes to relocate the massage establishment to a new properly zoned location within the city prior to the operation of the massage establishment at the new location. A conditional use permit from community development and services department is required for the new location and the change is subject to city council approval.

D. No massage establishment license is transferable for any reason. A massage establishment license is conferred only to the licensee named therein. Upon the sale or transfer of any interest in a massage establishment, other than as described in section 4.84.110, the business license for that massage establishment shall be null and void. A new application pursuant to this chapter shall be made by any person who, by reason of such sale or transfer, desires to own or operate the establishment.

E. A massage establishment that has undergone a sale or transfer of ownership may continue to operate while the new owner(s) are going through the approval process provided that the new owner applies for and receives a temporary license in accordance with 4.04.025. In order for the massage establishment to operate pursuant to this section, a massage establishment must have an approved manager in charge on the premises at all times the massage establishment is open for business. Allowing an applicant to continue to operate pending approval of the applicant's license shall in no way guaranty that an applicant will be granted a license if the applicant does not satisfy the license requirements or is otherwise disqualified from being licensed. Any costs or expenses incurred by an applicant prior to issuance of its license are solely at the applicant's risk.

4.84.170 Reserved.

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4.84.180 Disciplinary Action – License suspension, revocation or limitation.

Any activity by a massage establishment or its employees, agents, independent contractors, and representatives or a person previously found suitable, which is contrary to the public health, safety, morals, good order or general welfare of the residents of the city or that violates any city ordinance or state law or regulation is grounds for the issuance of criminal citations, notices of violation and civil penalties, and/or the suspension, limitation or revocation of a license. Disciplinary action may also be imposed for any of the following:

A. Doing or failing to do any act that would make one unqualified to obtain or hold a license under the provisions of this chapter or NRS Chapter 640C;

B. Operating a massage establishment or providing massage therapy services in an unlawful manner or in a manner detrimental to the public health, safety or welfare, or in violation of any of the provisions of this chapter or state law;

C. Knowingly failing to report or concealing from proper authority any information that the massage establishment, employee or independent massage therapist has a duty to report under this chapter or any statute, ordinance or regulation of the state or the city;

D. Becoming ineligible to hold a massage therapy or massage establishment license as set out in the statutes and ordinances of the state or city after a massage therapy or massage establishment license has been issued;

E. Misstating, misrepresenting or omitting any material fact in any application to obtain a license or conditional use permit;

F. Conduct on the part of any person, where such person engages in sexual activity, offers sexual activity or solicits sexual activity, from any person, at any time on the premises of the massage establishment;

G. Conduct on the part of any person that results in any person being charged with solicitation of prostitution on the premises of any massage establishment;

H. Possession of alcoholic beverages, or existence of any gaming activity, in the massage establishment or, in the case where the massage establishment is located within a facility licensed for alcohol or gaming such as a hotel, resort hotel, or athletic club, then in the area of such facility dedicated to the use of the massage establishment;



## Repeal and Establish Henderson Municipal Code Chapter 4.84 - Massage Establishments and Independent Massage Therapists

I. Transferring or attempting to transfer or assign a license issued under this chapter; or

J. Failure to comply with any of the requirements specified in this chapter or NRS Chapter 640C, as may be amended or renumbered.

4.84.190 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. The prohibition on granting a license, and the potential revocation, limitation or suspension of an existing license, shall also apply to the spouse, family member, or business associate of, or any person who holds more than a ten percent ownership interest in, such business whose license was suspended, limited or revoked.

4.84.200 Enforcement authority.

A. The director, agents or officers of the division, code enforcement, the police department, or any state or county regulatory agency shall be entitled to enforce the provisions of this chapter.

B. Such enforcement power shall include, but not be limited to, the power to issue notices of violation of this chapter, impose civil penalties up to \$500.00 for each violation for each day or any portion thereof during which the violation occurs or continues, declare nuisances, serve notices of correction, issue red tag/stop work orders, initiate suspension or revocation of licenses pursuant to chapter 4.06, and to perform all other duties relating to licensing enforcement as provided in this title. In addition, those persons identified in subsection A of this section shall have the authority to prepare, sign and serve misdemeanor citations pursuant to NRS Chapter 171, as may be amended or renumbered, to enforce the provisions of this title.

C. The director or his designee shall also have the authority to issue a "red tag/stop work order" for the following reasons:

1. No manager in charge present on the premises during business hours;
2. No massage therapist on the premises;
3. Refusal of the manager in charge, employee or other person to allow agents or officers of the division, code enforcement, the police department, or

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any state or county regulatory agency onto the premises for inspection to verify compliance with the provisions of this chapter;

4. Occurrence of a crime on the premises of the massage establishment related to the operations of the massage establishment or actions of an employee or independent massage therapist;

5. Existence of a threat to the public health, safety, welfare or morals;

6. A third violation of the provisions of this chapter by any employee, independent massage therapist or the massage establishment, or any combination thereof, in a six (6) month period;

7. Failure to comply with a plan of correction established between the division and the massage establishment or massage therapist during the time provided for in the plan of correction; or

8. Upon notice to the division or city from the Board or other governmental agency of discipline against a massage establishment or its employees or independent massage therapists if the discipline is an indication that continued operation of the massage establishment or provision of massage therapy services may be a threat to the safety, welfare, health or morals of the city.

The "red tag/stop work order" shall direct the massage establishment employees, independent massage therapist, or unlicensed person performing massage to cease and desist from the activity, or activities designated in the "red tag/stop work order". The "red tag/stop work order" shall be given in writing by the director or his designee to the massage establishment, its agents, or employees, or to unlicensed persons providing services in violation of this chapter, clearly stating the violation(s) being committed. The director or his officers shall affix a copy of the "red tag/stop work order" to the public entrance(s) of the massage establishment in a prominent location. It shall be unlawful for any person to remove the "red tag/stop work order" from the public entrance(s) of the establishment without the express written authorization of the director or one of his officers.

D. Any violation of a "red tag/stop work order," issued pursuant to subsection C of this section, shall be deemed a separate violation of this chapter and shall be cause to suspend, limit and/or revoke the massage establishment or independent massage therapist license. A notice of violation and civil penalty may be issued for each violation, for each and every day of continued violation.

E. When, in the course of enforcing the provisions of this title relative to emergency suspension or a "red tag/stop work order," the division shall have

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the authority to lock and seal the premises where the massage therapy services are being provided.

F. Any agents or officers of the division, code enforcement, the police department, or any state or county regulatory agency shall have access to every part and portion of the massage establishment or location where massage services are being provided at any time when a massage establishment is open for the transaction of business or massage therapy services are being provided, and after regular business hours if business is still being conducted, for the purpose of determining compliance with the provisions of this chapter and title 19 of the development code.

G. Failure of the director or agents or officers of the division, code enforcement, the police department, or any state or county regulatory agency to discover violations and/or take action to enforce any provision of this chapter shall not constitute a forfeiture or waiver of such person's right to take appropriate action at any time thereafter. Nothing in this chapter shall be construed as requiring the director or agents or officers of the division, code enforcement, the police department, or any state or county regulatory agency to impose any penalty on a massage establishment or massage therapist, if the division, police department, or relevant agency deems the matter giving rise to a notice of violation has been corrected.

H. This section is supplemental to, and not exclusive of, enforcement measures available to other officials regarding this title.

SECTION 4. If any section, subsection, sentence, clause, phrase, provision or portion of this Ordinance, or the application thereof to any person or circumstances, 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 or provisions of this Ordinance or their applicability to distinguishable situations or circumstances.

SECTION 5. All ordinances, or parts of ordinances, sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

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SECTION 6. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Review Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on October 23, 2015, in the Review Journal.

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PASSED, ADOPTED, AND APPROVED THIS 20<sup>TH</sup> DAY OF OCTOBER, 2015.

  
Andy Hafen, Mayor

ATTEST:

  
Sabrina Mercadante, MMC, City Clerk

The above and foregoing Ordinance was first proposed and read in title to the City Council on October 6, 2015, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

“COUNCIL AS A WHOLE”

Thereafter on October 20, 2015, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held October 20, 2015, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye:      Andy Hafen, Mayor  
                                 Councilmembers:  
                                 Sam Bateman  
                                 John F. Marz  
                                 Gerri Schroder

Those voting nay:      None  
Those abstaining:      None  
Those absent:          Debra March

  
Andy Hafen, Mayor

ATTEST:

  
Sabrina Mercadante, MMC, City Clerk