

# City of Desert Hot Springs

City Council

## AGENDA ITEM REPORT



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**To:** City Council  
**Date:** December 6, 2022  
**Department:** City Clerk  
**Prepared by:** Jerryl Soriano, City Clerk  
**Subject:** **Second Reading and Adoption of An Ordinance Repealing and Replacing Chapter 17.160 Massage Establishments of the Desert Hot Springs Municipal Code**

### RECOMMENDATION:

Approve Second Reading, read by title only and adopt: "An Ordinance of the City Council of the City of Desert Hot Springs, repealing and replacing Chapter 17.160 Massage Establishments of the Desert Hot Springs Municipal Code.

### BACKGROUND:

The ordinance (Exhibit 2) was introduced and approved for first reading by the City Council on November 15, 2022.

The ordinance shall take effect thirty (30) days after its second reading.

### FISCAL IMPACT:

There is no fiscal impact.

### ATTACHMENTS:

[Exhibit 1 - Staff Report from November 15, 2022](#)

[Exhibit 2 - Massage Ordinance \(Hotels\)](#)

# City of Desert Hot Springs

City Council

## AGENDA ITEM REPORT



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**To:** City Council  
**Date:** November 15, 2022  
**Department:** City Manager  
**Prepared by:** Christina Newsom, Compliance Manager  
**Subject:** **An Ordinance Repealing and Replacing Chapter 17.160 Massage Establishments of the Desert Hot Springs Municipal Code.**

### RECOMMENDATION:

- 1) Staff Report;
- 2) Entertain questions of Staff from the City Council
- 3) Open the Public Hearing;
- 4) Take public testimony for those in favor;
- 5) Take public testimony from those opposed;
- 6) Take public testimony from those in a neutral position;
- 7) Close the Public Hearing;
- 8) City Council discussion; and
- 9) Introduce for First Reading and read by title only: "An Ordinance of the City Council of the City of Desert Hot Springs, repealing and replacing Chapter 17.160 Massage Establishments of the Desert Hot Springs Municipal Code.

### BACKGROUND:

Desert Hot Springs Municipal Code ("DHSMC") Chapter 17.160 regulates massage therapists by establishing certain minimum standards for the education and conduct of these types of businesses to protect the public health and welfare of the citizens of Desert Hot Springs.

City Staff worked collaboratively with California Massage Therapy Council (CAMTC) to review our existing ordinance and identified several outdated, and unlawful provisions.

Our current ordinance requires a repeal and replacement to accomplish the following:

- 1) Deter human trafficking activity.
- 2) Require massage establishments to be permitted in addition to independent massage therapists.
- 3) Establish regulations applicable to the operation of massage establishments
- 4) Establish certification requirements from the California Massage Therapy Council.

5) Provide more robust massage establishment suspension and revocation provisions. Including upon suspension or revocation, a Massage Establishment shall immediately cease operation and no other Massage Establishment shall be permitted to operate at that location by the same Owner and/or Operator for a period of not less than one (1) year.

Moreover, businesses that offer ancillary Massage Therapy services such as Hotels and Spas are exempt from this Chapter. However, they are subject to the requirements set forth in:

- 5.56.40
  - California Massage Therapy Council certification required
- 5.56.210
  - Health and Safety Requirements shall be applicable to all Massage Establishments
- 5.56.230
  - Additional Regulations

#### **FISCAL IMPACT:**

There is no fiscal impact.

#### **ENVIRONMENTAL ANALYSIS:**

The City Council finds that the adoption of this Ordinance is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance in question may have a significant effect on the environment.

#### **ATTACHMENTS:**

[Exhibit 1 - Massage Ordinance \(Hotels\)](#)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, REPEALING CHAPTER 17.160 (MASSAGE ESTABLISHMENTS) AND ADDING CHAPTER 5.56 (MASSAGE ESTABLISHMENTS) OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

**WHEREAS**, the City of Desert Hot Springs (“City”) is a charter city organized pursuant to Article XI of the California Constitution; and

**WHEREAS**, Chapter 17.160 “Massage Establishment,” of the Desert Hot Springs Municipal Code (“DHSMC”) establishes regulations for the operation of massage establishments and massage therapists within the City; and

**WHEREAS**, the Massage Therapy Act, codified under California Business and Professions Code sections 4600 through 4621, established the California Massage Therapy Council and statewide regulations for massage and massage establishments; and

**WHEREAS**, section 51030 of the Government Code provides that the legislative body of a city may enact an ordinance which provides for the licensing for regulation of the business of massage carried on within the city; and

**WHEREAS**, local jurisdictions may enact an ordinance relating to massage or massage establishments provided such ordinances do not conflict with State law; and

**WHEREAS**, the City’s current massage therapy regulations must be updated to remain consistent with State law and to incorporate best practices; and

**WHEREAS**, therefore, City Council finds that repealing Chapter 17.160 and adding new Chapter 5.56 is required to modernize local massage therapy and massage establishment regulations; and

**WHEREAS**, the City Council finds that the adoption of this Ordinance is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance in question may have a significant effect on the environment; and

**WHEREAS**, this Ordinance protects the public health, safety and welfare.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS DOES ORDAIN AS FOLLOWS:**

**Section 1. RECITALS.**

The Recitals are hereby incorporated by this reference.

**Section 2. REPEAL OF CHAPTER 17.160 (MESSAGE ESTABLISHMENTS) AND ADDITION OF CHAPTER 5.56 (MESSAGE ESTABLISHMENTS) OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

Chapter 17.160 (Massage Establishments) is hereby repealed and replaced in its entirety with Chapter 5.56 (Massage Establishments) which shall read as follows:

**Chapter 5.56 MESSAGE ESTABLISHMENTS**

**5.56.010 Title.**

This chapter may be cited as the “Desert Hot Springs Massage Establishment Ordinance.”

**5.56.020 Purpose and intent.**

A. Government Code sections 51030 *et seq.* expressly provides authority for local regulation of Massage Establishments. This Chapter also relies upon the certification process of the California Massage Therapy Council under California Business and Professions Code sections 4600 *et seq.* In addition, this Chapter provides certain minimum standards for the operation of Massage Establishments, their managing employees, and massage therapists and practitioners.

B. The purpose and intent of this Chapter is to provide for the orderly regulation of Massage Establishments, as defined herein, and to prevent and discourage the misuse of Massage Therapy as a front for prostitution and related activities in violation of state law. It is in the interests of the public health, safety, and welfare to provide certain minimum building, sanitation, and operation standards for such businesses, and by requiring certain minimum qualifications for the operators and practitioners of such businesses.

**5.56.030 Definitions.**

For the purpose of this Chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth, shall have the following definitions:

“Administrative Hearing Officer” means the individual who shall conduct administrative appeal hearings and render decisions pursuant to the administrative appeal procedures set forth in this Chapter.

“California Massage Therapy Council” or “CAMTC” shall mean the California Massage Therapy Council as established by the Massage Therapy Act, Chapter 10.5 of Division 2 of the Business and Professions Code.

“Certified Massage Professional” shall mean any individual certified by the CAMTC as a “Certified Massage Therapist” or “Certified Massage Practitioner” as having met or exceeded the minimum educational standards established by California Business

and Professions Code sections 4600 *et seq.* and having passed all background checks required by the CAMTC.

“City” shall mean the City of Desert Hot Springs.

“Code” shall mean the City of Desert Hot Springs Municipal Code.

“For Compensation” shall mean the exchange of Massage Therapy for money, goods, or any other thing of value. A Massage Establishment or Person may not avoid the requirements of this Chapter by offering free Massage Therapy in conjunction with other services or goods provided to a Patron for compensation.

“Massage Establishment” shall mean any establishment having a fixed place of business, including a Sole Proprietor, firm, association, partnership, limited liability company, corporation, joint venture, or combination thereof, that offers Massage Therapy for compensation within the City. “Massage Establishment” shall include the term “massage and/or bodywork office or establishment.” Any business or establishment that offers any combination of Massage Therapy and bath facilities including, but not limited to, ~~hotels, spas,~~ showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a Massage Establishment under this Chapter.

“Massage therapist” means any individual who has obtained a permit as required by this chapter to engage in the practice of massage therapy for compensation.

“Massage Therapy” shall 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 electrical apparatus, or other appliances or devices, with or without such supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, aromatherapy or other similar preparations and techniques. For the purposes of this Chapter, “Massage Therapy,” “massage,” and/or “bodywork” will be used interchangeably.

“Operator” and/or “Massage Establishment Operator” means a person, whether an Owner or non-Owner, who manages or operates a Massage Establishment, including, but not limited to, all Certified Massage Professional performing Massage Therapy at a Massage Establishment.

“Owner” and/or “Massage Establishment Owner” shall mean any individual natural person, proprietorship, partnership, firm, association, joint stock company, corporation, organization, limited liability company, trust, or combination of individuals of whatever form or character that owns, or has an equity interest in, ~~or shares a percentage of the Massage Therapy proceeds with a~~ the Massage Establishment.

“Patron” shall mean an individual on the premises of a Massage Establishment for the purpose of receiving Massage Therapy.

“Permit” or “Massage Establishment Permit” shall mean a permit required by this Chapter to operate a Massage Establishment. Unless specifically provided in this Chapter, Permits are not transferable.

“Person” and/or “Persons” shall include any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals.

“Reception and Waiting Area” shall mean an area immediately inside the main entry door of the Massage Establishment dedicated to the reception and waiting of Patrons and Visitors of the Massage Establishment, and which is not a Massage Therapy room or otherwise used for the provision of Massage Therapy services.

“Sole Proprietorship” and/or “Sole Proprietor” shall mean a Massage Establishment where the owner owns 100 percent of the business, is the only person who provides Massage Therapy services for compensation for that business, and has no other employees or independent contractors.

“Visitor” shall mean any individual not retained or employed by the Massage Establishment and not receiving or waiting to receive Massage Therapy services, but excluding law enforcement personnel or governmental officials performing governmental business.

#### **5.56.040 CAMTC Certification Required.**

A. It shall be unlawful for any individual to practice Massage Therapy for compensation within the City unless that individual is currently certified by the CAMTC as a Certified Massage Professional in good standing.

B. It shall be unlawful for any Massage Establishment Owner or Operator within the City, ~~including hotels and spa facilities,~~ to employ or retain any person to practice Massage Therapy for compensation, or to allow any person to perform Massage Therapy for compensation on the premises of a Massage Establishment, unless the person is a Certified Massage Professional in good standing, as defined in this Chapter.

1. For purposes of this Chapter, an Owner and/or Operator “employs or retains” a person to practice Massage Therapy for compensation if:
  - a. That person is a directly paid employee of the Massage Establishment; or
  - b. That person is an independent contractor who receives compensation for Massage Therapy provided to Patrons of the Massage Establishment; or
  - c. That person receives a referral of Patrons from the Massage Establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the Massage Establishment Operator (whether or not the parties

acknowledge the same or record such compensation in their financial records).

C. Except as otherwise provided in this chapter, no other permits or licenses are required for any individual to practice Massage Therapy for compensation within the City if that individual is currently certified by the CAMTC as a Certified Massage Professional in good standing.

#### **5.56.050 Massage Establishment – Permit and Business License Requirements.**

A. Massage Establishment Permit required. It shall be unlawful for any Person or Persons to own or operate a Massage Establishment or permit the operation of a Massage Establishment within the City without first obtaining a Massage Establishment Permit pursuant to the requirements of this Chapter. ~~This requirement is in addition to any other permit requirements for hotels and spa facilities.~~

B. Business License required. It is unlawful for any Person or Persons to own and operate a Massage Establishment or permit the operation of a Massage Establishment within the City without first having procured a business license. ~~This requirement is in addition to any other license requirements for hotels and spa facilities.~~

#### **5.56.060 Sole Proprietors – Permit and Business License Requirements.**

A. Business License required. It is unlawful for any sole proprietor to provide massage therapy for compensation within the City without first having procured a business license.

B. Home Occupancy Permit Required. In addition to the requirements of this section, it is unlawful for any sole proprietor to provide massage therapy for compensation in his or her home located within the City without first having procured a Home Occupancy Permit pursuant to this code. A sole proprietor who does not provide massage therapy for compensation in his or her home is not required to procure a Home Occupancy Permit.

#### **5.56.070 Exemptions.**

A. This Chapter shall not apply to the following Person or Persons while engaged in the personal performance of the duties of their respective professions:

1. Physicians, surgeons, chiropractors, osteopaths, acupuncturist, or physical therapists who are duly licensed to practice their respective professions in the state, or any nurse or physical therapist working under the supervision thereof, when engaging in any massage therapy practice or activity within the scope of such license;



2. Any individuals licensed to practice the art of healing as defined under the Business and Professions Code of the state of California, while engaging in a practice within the scope of their license;
3. Barbers, estheticians, and cosmetologists who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses;
4. Any employee of a California state-licensed hospital, nursing home, or other state-licensed physical or mental health facility while engaging in a practice within the scope of their employment;
5. Accredited high schools, junior colleges, or colleges or universities whose coaches and trainers are acting within the scope of their employment;
6. Trainers of any amateur, semiprofessional or professional athlete or athletic teams while engaging in their training responsibilities for and with athletes so long as such persons do not practice Massage Therapy as their primary occupation at any location where they provide such services within the City; and
7. Accredited colleges or universities that offer massage therapy programs whose instructors and students are acting within the scope of their employment or within the scope of their curriculum.

**B. Businesses that offer ancillary Massage Therapy services are exempt from this Chapter, subject to the requirements set forth below. Ancillary services shall be those services performed at a business where 15 percent or less of the overall business operations are related to provision of Massage Therapy services as measured by the percentage of gross sales or floor area devoted to provision of massage, whichever is greater. Businesses to which this exemption may apply include, but are not limited to, health clubs, hotels, spas, and beauty salons.**

1. **Businesses that offer ancillary Massage Therapy services must comply with Sections 5.56.040, 5.56.210, and 5.56.230 of this Chapter.**

#### **5.56.080 Permit Application for Massage Establishments.**

All Owners of a Massage Establishment shall file an application, signed under penalty of perjury, for a Massage Establishment Permit with the City Manager or his/her designee. The application shall be accompanied by a reasonable fee to be set by resolution. The application shall include the following information:

- A. The legal name and any fictitious name of the Massage Establishment, address, and telephone number of the Massage Establishment.

B. The name, residence address and telephone number, and business address and telephone number of each Owner(s) applying for the Massage Establishment Permit, along with a copy of a valid government issued photo identification.

C. The form of business under which the Owner(s) will be conducting the Massage Establishment, i.e. corporation, general or limited partnership, limited liability company or other form. If the Owner is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence address(es) of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Owner is a general or limited partnership, the application shall set forth the name and residence address of each of its members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to partnership, limited liability company, or corporate Owner shall apply, as applicable.

D. The name and address of the owner of the real property upon, in, or from which the Massage Establishment is to be operated. In the event the Owner is not the legal owner of the property, the application shall be accompanied by a copy of a written and signed lease between the Owner and the property owner authorizing use of the premises as a Massage Establishment, or, if no written lease exists, a written, notarized acknowledgement from the property owner that the property owner has been advised that a Massage Establishment will be operated upon, in, or from the property.

E. A description of the proposed Massage Establishment, including the type of treatments to be administered.

F. The name of each individual who the Massage Establishment does or will employ or retain to perform Massage Therapy for compensation, including independent contractors.

G. For each person that the Massage Establishment does or will employ or retain to perform Massage Therapy, including independent contractors, a copy of that person's current CAMTC certification as a Certified Massage Practitioner or Certified Massage Therapist, and a copy of that person's current CAMTC-issued identification card.

H. The names and addresses of each Massage Establishment Operator, if different than the Owner.

I. For each Owner(s) and Operator(s) of the Massage Establishment who are a CAMTC-Certified Massage Professional, a copy of his or her current certification from the California Massage Therapy Council as a Certified Massage Practitioner or as a Certified Massage Therapist, and a copy of that person's current CAMTC-issued identification card.

J. For each Owner(s) and Operator(s) of the Massage Establishment who are not a CAMTC-Certified Massage Professional, the following information:

1. Whether the Owner(s) and Operator(s) has within the five (5) years immediately preceding the date of application, been convicted in any of the following offenses: California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22; California Health and Safety Code Section 11054, 11055, 11056, 11057, or 11058; or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses.
2. Whether the Owner(s) and Operator(s) are currently required to register under the provisions of Section 290 of the California Penal Code or any similar mandatory registration law from another state or federal jurisdiction.
3. The Owner(s) and Operator(s)' business, occupation, and employment history for five (5) years preceding the date of application, and the inclusive dates of same.

K. For any Owner(s) and Operator(s) who are not a CAMTC-Certified Massage Professional, one (1) set of fingerprints for each Owner and Operator in a form satisfactory to the City Manager or his/her designee and authorization to conduct the necessary background investigations to determine the truthfulness and correctness of the information provided by Owner and Operator and to determine whether the Owner or Operator is qualified pursuant to this chapter to receive the requested permit. The fingerprints shall be taken at a place designated by the City Manager or his/her designee, and any required fee for such fingerprinting shall be paid by the Owner and/or Operator.

L. Whether any license or permit has ever been issued to the Owner(s) and Operator(s) by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied. Additionally, whether any massage certification has been denied or revoked by an any organization operating under statutory authority. Include copies of any documentary materials relating to such denial, suspension, revocation, withdrawal, or denial.

#### **5.56.090 Land use and zoning requirements.**

The Massage Establishment premises and property on which the premises occupied by the Massage Establishment are located must conform to all applicable federal, state, and City land use and zoning requirements.

#### **5.56.100 Notice to Property Owner.**

Where the Owner for a Massage Establishment Permit is not the record owner as shown on the latest county recorder's official records for the property upon, in, or from which the Massage Establishment is to be operated, then upon issuance of the permit, the City Manager or his/her designee may send a written notice to the property owner advising of the issuance of the permit and of the regulations applicable to the Massage Establishment and the property pursuant to this Chapter. Any other notices sent to the

Operator pursuant to this Chapter at any time before or after the issuance of the permit may also be sent to the property owner.

#### **5.56.110 Issuance of a Massage Establishment Permit.**

A. Within thirty (30) days following receipt of a completed permit application, the City Manager or his/her designee shall inspect the Massage Establishment and grant a Massage Establishment Permit to an Owner who has satisfied the requirements of this chapter and all other applicable laws, including but not limited to, the City's building, zoning, business, and health regulations and no grounds for denial exist. The permit shall include, but not be limited to, the name of the Massage Establishment, the address of the Massage Establishment, the name(s) of the Operator(s) of the Massage Establishment, the date of issuance of the permit, the date of expiration of the permit, the permit number, a listing of the Certified Massage Professionals registered and authorized to perform Massage Therapy for the Massage Establishment, and a listing of any other persons employed or retained to work in any other capacity on the premises, including independent contractors. The permit shall be valid for a term of one (1) year from the date of issuance, unless revoked or suspended as provided herein.

B. Conditions of approval. If a Massage Establishment Permit is approved, the City Manager or his/her designee shall include such restrictions and conditions in the permit, as the City Manager or his/her designee deems reasonable and necessary under the circumstances to ensure compliance with the purposes and intent of this Chapter.

C. It is unlawful for a Massage Establishment to operate under any name or conduct business under any designation not specified in the Massage Establishment Permit issued pursuant to this Chapter.

D. No Massage Establishment permit shall be sold, transferred, or assigned by the permittee or by operation of law to any other Person. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void. A new Owner and/or Operator of a Massage Establishment must submit a new application for a Massage Establishment permit. It is unlawful for a Massage Establishment to continue to operate following the sale or transfer of any interest in the Massage Establishment to a Person who was not identified as an Owner or Operator in the Massage Establishment permit application.

#### **5.56.120 Change of Business Name or Location.**

No Person permitted to operate a Massage Establishment under this Chapter shall operate under any name or conduct business under any designation not specified in the Massage Establishment Permit and City business license. Upon change of location of a Massage Establishment where there is no change in Massage Establishment Owners or Operator(s), an application for an amended Massage Establishment Permit shall be filed with the City Manager or his/her designee, and such application shall be granted,

provided all applicable provisions of this Chapter are complied with as to the new location.

**5.56.130 Requirement to Amend Permit Application.**

Whenever the information provided in the application for a Massage Establishment Permit on file with the City changes (e.g. a change in employees), the Owner shall, within ten (10) business days after such change, file an amendment to the permit application with the City Manager or his/her designee. The amendment shall be accompanied by a fee set by resolution. It shall be a violation of this Chapter for an Owner and/or Operator to allow, and person to perform, Massage Therapy for compensation on the premises of a Massage Establishment unless and until an amended permit has been issued by the City Manager or his/her designee.

**5.56.140 Notifications.**

A permittee shall immediately report to the City any of the following:

- A. Arrests of any employees, contractors, Owners, or Operators of the Massage Establishment.
- B. Resignations, terminations, or transfers of any Certified Massage Professionals employed by or contracted with the Massage Establishment;
- C. The occurrence of any event involving the Massage Establishment or any Certified Massage Professionals employed by the Massage Establishment that constitutes a violation of this Chapter or state or federal law.

**5.56.150 Permit Renewal.**

A Massage Establishment Permit issued pursuant to the terms of this Chapter shall be valid for a term of one (1) year from the date of issuance. A permit that has not expired and has not been suspended or revoked pursuant to this Chapter may be renewed for another one-year period, on submittal of a written application and payment of an application fee to be set by resolution.

**5.56.160 Permits Non-transferrable.**

- A. Massage Establishment Permits are non-transferable.
- B. Upon a sale or transfer of any Massage Establishment, or upon the sale or transfer of some or all of the interest of any Owner to a person who is not already an Owner of the Massage Establishment, a new Massage Establishment Permit shall be required, in addition to any other permits, licenses, and entitlements required by this code.

**5.56.170 Denial of a Permit.**

- A. The City Manager or his/her designee may deny a Massage Establishment Permit based on any of the following grounds:

1. The Massage Establishment, as proposed by the applicant, would not comply with the requirements of this chapter and/or with any applicable law, including, but not limited to, the City's building, fire, zoning, and health regulations.
2. The applicant, Operator, Owner, or any officer or director thereof, has made any false, misleading, or fraudulent statement of material fact in the application for a Massage Establishment permit.
3. The applicant, Operator, Owner, any employee, any officer, or director of the proposed Massage Establishment is required to register under Section 290 of the California Penal Code.
4. The applicant, Operator, Owner, any officer, or director of the proposed Massage Establishment has been convicted of any offense involving sexual misconduct with children.
5. Any Operator of the Massage Establishment who is an individual has not attained the age of 18 years.
6. The applicant, Operator, Owner, or any officer or director thereof, has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses.
7. The applicant, Owner, Operator, or any officer or director of a Massage Establishment has been convicted of offenses equivalent to those listed above under the laws of another jurisdiction, even if expunged.
8. The applicant, Owner, Operator, or any officer or director of the Massage Establishment has been convicted of a violation of Health and Safety Code Section 11550 or any offense involving the possession or sale of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or convicted of an equivalent offense in any other state.
9. The operation of the Massage Establishment at the proposed location would be injurious to the health, safety, or welfare of the community.
10. The applicant, Owner, Operator, or any officer, or director of the Massage Establishment has violated any provision of this Chapter or any similar law, rule or regulation of another public agency that regulates the operation of Massage Establishments.

11. Any Owner or Operator of the Massage Establishment, within five years immediately preceding the date of filing of the application, has had a permit or license to practice massage for compensation or to own and/or operate a Massage Establishment revoked or denied in any jurisdiction, or had a massage certification denied or revoked by any organization operating under statutory authority.

B. If a Massage Establishment Permit is denied, the City Manager or his/her designee shall serve on the Owner(s) a written notice of denial specifying the grounds for the denial and of the right to request a hearing in regard thereto.

#### **5.56.180 Appeal Hearing for Denial of Permit.**

A. The Owner(s) shall have the right to appeal from a decision by the City Manager or his/her designee to deny a Massage Establishment Permit by filing with the City Clerk a written notice of appeal, specifying the grounds for such appeal, within ten (10) days after the decision has been served on the Owner(s).

B. Such appeal shall be heard by an Administrative Hearing Officer designated by the City Manager or his/her designee, as follows:

1. All Administrative Hearing Officers shall be impartial third parties and shall not have any pecuniary interest or other bias in the proceeding over which he or she is presiding, nor any pecuniary interest or bias in the outcome thereof.

2. The Owner(s) shall be given not less than five (5) days written notice of the date, time and location of appeal hearing.

3. The Administrative Hearing Officer shall consider all relevant evidence at the hearing, may continue the hearing, and may require such evidence and legal briefing as may be helpful in addressing issues raised by the appeal. The Administrative Hearing Officer shall not be limited by the technical rules of evidence.

4. Not more than fifteen (15) days following the conclusion of the hearing, the Administrative Hearing Officer shall issue a written decision as to whether the application shall be granted or denied. The written decision shall be served on the Owner(s), with a copy served on the City Manager or his/her designee. The written decision of the Administrative Hearing Officer shall be final and shall only be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

#### **5.56.190 Special Events**

A. Subject to the requirements of this chapter, Massage Therapists or Massage Establishments may apply for a permit under this section to perform massage therapy for compensation at special events. The application form shall be provided by the City and shall request the following information:

1. The name of the applicant;
2. The address of the special event;
3. A copy of the massage establishment permit validly issued by the City pursuant to this chapter, if applicable;
4. A list of the massage therapists who will be working at the special event;
5. Copies of each massage therapist's CAMTC-issued identification card;
6. Copies of business licenses issued by the City;
7. A declaration signed under penalty of perjury by each participating massage therapist that provides that he or she has not been convicted of any of the following: California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22;
8. A declaration signed under penalty of perjury by each participating massage therapist that provides that he or she has not been convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22;
9. A declaration signed under penalty of perjury by each participating massage therapist that provides that the applicant is not required to register as a sex offender as set forth in California Penal Code Section 290;
10. A declaration signed under penalty of perjury by each participating massage therapist that provides that he or she has not been convicted of any felony offense involving the sale of any controlled substance specified in California Health and Safety Code Section 11054, 11055, 11056, 11057, or 11058; and
11. A declaration signed under penalty of perjury by each participating massage therapist that provides that he or she has not been convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as a felony offense involving the sale of any controlled substance specified in California Health and Safety Code Section 11054, 11055, 11056, 11057, or 11058.

B. All of the above information shall be submitted to the City at least 14 calendar days before the date of the special event.

C. The applicant shall pay an application deposit fee in an amount as established from time to time by the city council, for each one-day permit at the



time of filing an application pursuant to this section. If additional funds are necessary to cover the above costs, the applicant shall pay such additional costs to the city manager before further processing of the application may proceed. Any unused portion of the deposit shall be refunded to the applicant.

D. Grounds for denial of the special event permit shall include any of the grounds for denial set forth in Section 5.56.170.

E. The decision of the city manager or designee shall be final.

F. Nothing in this section shall be construed to permit such massage therapist to perform or conduct any massage therapist at any other location in the city at any other time, unless such massage therapist has obtained a validly issued massage therapist permit pursuant to this chapter.

G. Special event permittees, including independent contractors, must obtain a business license.

H. Special events are subject to special use permits, as applicable in this code.

#### **5.56.200 Regulations Applicable to the Operation of Massage Establishments.**

A. Operational Requirements. Except as otherwise specifically provided in this Chapter, the following operational requirements shall be applicable to all Massage Establishments located within the City:

1. Massage Establishments shall comply with all applicable Code requirements, including, but not limited to, obtaining a business license.
2. No Massage Establishment shall be open for business between the hours of 8:00 p.m. and 9:00 a.m. A massage begun any time before 8:00 p.m. must nevertheless terminate at 8:00 p.m. The hours of operation shall be displayed in a conspicuous place in the Reception and Waiting Area and in any front window clearly visible from outside of the Massage Establishment. Patrons shall be permitted in the Massage Establishment only during the hours of operation.
3. During the hours of operation, Patrons shall be permitted in Massage Therapy rooms only if at least one (1) duly authorized Certified Massage Professional is present on the premises of the Massage Establishment. Patrons shall not be permitted in any employee break room.
4. During the hours of operation, Visitors shall not be permitted in any Massage Therapy room except:
  - a. As a parent or guardian of a Patron who is a minor child;
  - b. As a minor child of a Patron where necessary for the supervision of the child; or

- c. As a conservator, aid, or other caretaker of a Patron who is elderly or disabled.
5. Except as otherwise provided herein, Visitors shall not be permitted in Massage Therapy rooms, break rooms, dressing rooms, showers, or any other room or part of the Massage Establishment premises other than the Reception and Waiting Area or the restroom.
6. A list of services, the length of services, and the cost of such services shall be posted in an open and conspicuous public place on the premises, or provided to Patrons before services are rendered. No Massage Establishment Owner or Operator shall permit, and no person employed or retained by the Massage Establishment, including independent contractors, shall perform or offer to perform, any services or request or demand any fees other than those posted.
7. No Massage Establishment shall place, publish or distribute, or cause to be placed, published or distributed, any advertising material that depicts any portion of the human body that would reasonably suggest to prospective clients that any service is available other than those services listed as an available service, nor shall any Massage Establishment employ language in the text of advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this Chapter.
8. Each Massage Establishment shall require all Patrons to sign in with their full name and the date of their visit before receiving service. Any person practicing Massage Therapy in the Massage Establishment shall be required to notify the Desert Hot Springs Police Department of a Patron who solicits or attempts to solicit prostitution at the Massage Establishment.
9. Each holder of a Massage Establishment Permit shall display that permit in an open and conspicuous place on the premises visible from the entrance and/or Reception and Waiting Area of the Massage Establishment. Any person who practices Massage Therapy shall carry with them their CAMTC issued certification card at all times while on the premises of a Massage Establishment for the purpose of practicing Massage Therapy.
10. The name of the Operator must be posted in an open and conspicuous place on the premises visible from the entrance and/or Reception and Waiting Area of the Massage Establishment. It is unlawful for an Owner to not have an Owner or Operator on the premises at all times the Massage Establishment is open.
11. It is unlawful for an Owner and/or Operator to operate a Massage Establishment in which any unprofessional conduct occurs as defined by Business and Professions Code section 4609.

12. Each Massage Establishment shall provide an updated employee roster or list, which shall include independent contractors, on a monthly basis to the City. Copies of such roster or list must be produced to the City upon request.
13. **No alcoholic beverages shall be sold, served, or furnished to any Patron; nor shall any alcoholic beverages be kept, possessed, or consumed on the premises of the Massage Establishment.**
14. **No person shall enter, be or remain in any part of a Massage Establishment while in possession of an open container of alcohol, or while consuming or using any alcoholic beverages, marijuana, or controlled drugs except pursuant to a prescription for such drugs. The Owner and/or Operator shall not permit any such person, or any person who is clearly intoxicated, to enter or remain upon the premises.**

B. Physical Facility and Building Code Requirements. Except as otherwise specifically provided in this Chapter, the following physical and building code requirements shall be applicable to all Massage Establishments located within the City:

1. One main entry door shall be provided for Patron entry to the Massage Establishment, which shall open to an interior Reception and Waiting Area. All Patrons and any persons other than individuals employed or retained by the Massage Establishment, including independent contractors, shall be required to enter and exit through the main entry door. Unless the Massage Establishment is a Sole Proprietorship or employs or retains only one employee, the main entry door shall be unlocked at all times during business hours.
2. No Massage Establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior Reception and Waiting Area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.
3. All interior doors, including doors used to enter or exit a Massage Therapy room, shall not have any locking mechanisms. A door leading from the Reception and Waiting Area to Patron areas, if any, shall not have any locking mechanism or be capable of being locked or blocked to prevent entry, in any manner. Restrooms may have a door capable of locking.
4. Minimum lighting equivalent to at least one (1) 40-watt light shall be provided in each Massage Therapy room, restroom, hallways, and Reception and Waiting Area.
5. A minimum of one ADA compliant and handicap accessible toilet and washbasin shall be provided in every Massage Establishment.

6. A massage table shall be used for all Massage Therapy, with the exception of "Thai," "Shiatsu," and similar forms of Massage Therapy, which may be provided on a padded mat on the floor, provided the Patron is fully clothed. Massage Therapy tables shall have a minimum height of eighteen (18) inches.
7. Beds, sofa beds, floor mattresses, and waterbeds are not permitted on the premises of the Massage Establishment, and no Massage Establishment shall be used for residential or sleeping purposes.
8. All locker facilities that are provided for the use of Patrons shall be fully secured for the protection of the Patron's valuables, and each Patron shall be given control of the key or other means of access.
9. Minimum ventilation shall be provided in accordance with the Building Code of the City.
10. All restrooms or washbasins shall be provided with hot and cold running water, soap, and single-service towels in wall-mounted dispensers.
11. The Massage Establishment shall comply with all applicable state and local building standards and requirements, and the fire code.
12. Except as otherwise provided in the Code, all plumbing and electrical installations shall be installed under permit and inspection of the building inspection department and such installations shall be installed in accordance with the California Building Code and the California Plumbing Code.

#### **5.56.210 Health and Safety Requirements.**

- A. Health and Safety Requirements. Except as otherwise specifically provided in this Chapter, the following health and safety requirements shall be applicable to all Massage Establishments located within the City:
  1. The Massage Establishment shall at all times be equipped with an adequate supply of clean, sanitary towels, coverings, and linens, and all massage tables shall be covered with a clean sheet or other clean covering for each Patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle, and not used again until properly laundered and sanitized. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use. Heavy white paper may be used in lieu of towels, coverings, or linen, provided that the paper is used once for each Patron and then discarded into a sanitary receptacle.
  2. All Massage Therapy rooms or cubicles, wet and dry heat rooms, restrooms, shower compartments, hot tubs, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day

when the premises have been or will be open and such facilities are in use. All bathtubs shall be thoroughly cleaned and disinfected after each use.

3. The walls in all rooms where water or steam baths are given shall have washable, mold-resistant surfaces.
4. All liquids, creams, or other preparations used on or made available to Patrons shall be kept in clean and closed containers, and according to the instructions for storage and use. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream, or other preparation is to be used on or made available to a Patron, it shall be removed from the container in such a way so as to not contaminate the remaining portion.
5. Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of Massage Therapy, and said instruments shall be disinfected and sterilized after each use.
6. Pads used on massage tables shall be covered with durable, washable plastic or other acceptable waterproof material.
7. All bathrobes, bathing suits, and/or other garments that are provided for the use of Patrons shall be either fully disposable and not used by more than one (1) Patron, or shall be laundered after each use.
8. All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of Patrons shall be either fully disposable and not used by more than one (1) Patron, or shall be fully disinfected after each use.
9. No Patrons shall be allowed to use any shower facilities of the Massage Establishment unless such Patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of Patrons shall be either fully disposable and not used by more than one (1) Patron, or shall be fully disinfected after each use.
10. The Patron's genitals, pubic area, anus, and areola must be fully covered at all times while any individual employed or retained by the Massage Establishment to practice Massage Therapy for compensation, including independent contractors, or any other employee or Operator of the Massage Establishment, is in the Massage Therapy room or cubicle with the Patron. No Massage Therapy shall be provided to a Patron that results in contact with genitals, pubic area, anus, or areola of the Patron. No Massage Therapy shall be provided to a Patron that results in the contact of female breasts without the written consent of the Person receiving the Massage Therapy and a referral from a licensed California health care provider.

**11. No alcoholic beverages shall be sold, served, or furnished to any Patron; nor shall any alcoholic beverages be kept, possessed, or consumed on the premises of the Massage Establishment.**

**12. No person shall enter, be or remain in any part of a Massage Establishment while in possession of an open container of alcohol, or while consuming or using any alcoholic beverages, marijuana, or controlled drugs except pursuant to a prescription for such drugs. The Owner and/or Operator shall not permit any such person, or any person who is clearly intoxicated, to enter or remain upon the premises.**

B. Attire and Physical Hygiene Requirements. The following attire and physical hygiene requirements shall be applicable to all employees and any other persons who work permanently or temporarily on the premises of the Massage Establishment within the City, including, but not limited to, all persons who are employed or retained to practice Massage Therapy or bodywork for the Massage Establishment, including independent contractors:

1. No person shall dress in:

- a. attire that is transparent, see-through, or substantially exposes the person's undergarments;
- b. swim attire, unless providing a water-based massage modality approved by the CAMTC;
- c. a manner that exposes the person's breasts, buttocks, or genitals;
- d. a manner that constitutes a violation of Section 314 of the California Penal Code.

2. No Massage Establishment Owner, Operator, employee, or Visitor shall, while on the premises of a Massage Establishment and while in the presence of any Patron, customer, employee or Visitor, expose his or her pubic areas, areola, breasts, buttocks, or genitals.

3. All persons shall thoroughly wash their hands with anti-bacterial soap and water or any equally effective cleansing agent immediately before providing Massage Therapy to a Patron. No Massage Therapy shall be provided upon a surface of the skin or scalp of a Patron where such skin is inflamed, broken (e.g. abraded or cut), or where a skin infection or eruption is present.

#### **5.56.220 Change of On-Site Manager**

It shall be unlawful for a massage establishment to change its on-site manager without submitting a new massage establishment permit application pursuant to this chapter.

### **5.56.230 Additional Regulations**

- A. No massage therapist, patron, or any other person present where massage therapy services are being offered or performed shall:
1. Expose the genitals, anus, or areola of any person before, during, or after massage therapy.
  2. Touch or expose or cause to be touched, or exposed the genitals, anus, or areola of any person before, during, or after massage therapy.
  3. Permit a patron to touch, expose, or view the genitals, anus, or areola of any person before, during, or after massage therapy.
  4. Offer or provide massage therapy for compensation while under 18 years of age.
  5. Provide massage therapy while his or her CAMTC certification is suspended or revoked.
  6. Engage in sexually suggestive advertising related to massage therapy services.
  7. Engage in any form of sexual activity.

### **5.56.240 Massage Establishment Inspection.**

- A. Any and all investigating officials of the City shall have the right to enter Massage Establishments from time to time during regular business hours to make reasonable inspections and observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and this Code.
- B. The Massage Establishment Owner and Operator shall take immediate action to correct each violation noted by the City.

### **5.56.250 Revocation and Suspension of Permits.**

In addition to any other remedy available to the City under this Code or state law, a Massage Establishment Permit may be suspended or revoked by the City Manager or his/her designee. Upon suspension or revocation, the Massage Establishment shall immediately cease operation. If so ordered by the City Manager or his/her designee, no other Massage Establishment shall be permitted to operate at that location by the same Owner and/or Operator for a period of not less than one (1) year. If the Owner is not also the legal owner of the real property on which the Massage Establishment is situated, notice of such suspension or revocation and the one-year prohibition, if any, shall be provided by the City Manager or his/her designee to the owner of record of the property as shown on the latest county recorder's official records.

Notwithstanding any other provision of this Chapter, where a notice of revocation or suspension has been issued to the Owner of a Massage Establishment, the City Manager or his/her designee shall not process or grant an application for a Massage Establishment Permit for a new Massage Establishment at the same premises unless and until such notice is dismissed, or a final determination is made that the permit is not or should not be revoked or suspended, or any prohibition period has expired.

A. Grounds for Revocation and Suspension.

All Massage Establishment Owners and Operators shall be deemed to know and understand the requirements and prohibitions of this Chapter. The Massage Establishment Owner(s) and Operator(s) shall be responsible for the conduct of all Massage Establishment employees, agents, independent contractors, and other representatives, while on the premises of the Massage Establishment.

Any Massage Establishment Permit may be suspended or revoked by the City Manager or his/her designee after a hearing, where it is found by a preponderance of the evidence that any of the following have occurred, on even a single occasion:

1. The person(s) to whom the Massage Establishment Permit was issued, or any person employed or retained by the Massage Establishment, including an independent contractor, has been found to have violated any provision of this Chapter or this Code; or
2. The permittee, Owner, Operator, or any person employed or retained by the Massage Establishment, including an independent contractor, has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of California Penal Code Section 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22, or conspiracy or attempt to commit any such offense, or any offense in a jurisdiction outside of the State of California that is the equivalent of any of the aforesaid offenses; or
3. The permittee, Owner, Operator, or any person employed or retained by the Massage Establishment, including an independent contractor, is required to register under Section 290 of the California Penal Code; or
4. The permittee, Owner, Operator, or any person employed or retained by the Massage Establishment, including an independent contractor, has been convicted in a court of competent jurisdiction of having violated California Health and Safety Code Section 11054, 11055, 11056, 11057, or 11058; or
5. The permittee, Owner, Operator, or any person employed or retained by the Massage Establishment, including an independent contractor, has been convicted of any offense involving sexual misconduct with children; or



6. The permittee, Owner or Operator has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside of the State of California; or
7. The permittee, Owner or Operator or any person employed or retained by the Massage Establishment, including an independent contractor, has engaged in fraud or misrepresentation or has made a misstatement of material fact while working in or for the Massage Establishment; or
8. The permittee, Owner or Operator has continued to operate the Massage Establishment after the Massage Establishment Permit has been suspended; or
9. Massage Therapy is or has been performed on the premises of the Massage Establishment, with or without the permittee, Owner or Operator's actual knowledge, by any person who is not a duly authorized Certified Massage Professional; or
10. There have been one or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the Massage Establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the permittee; or
11. The permittee, Owner, Operator, or any person employed or retained by the Massage Establishment, including an independent contractor, has engaged in conduct prohibited by the CAMTC in section 4609 of the California Business and Professions Code; or
12. The permittee, Owner, Operator, or any person employed or retained by the Massage Establishment, including an independent contractor, or any other person on the premises of the Massage Establishment, has engaged in conduct or committed acts that a reasonable person in the Patron's position would understand as an offer to perform on or engage in with the Patron acts that are sexual in nature or that involve touching of the patron's genitals, pubic area, anus, and/or areola.

B. Notice of Revocation or Suspension.

The City Manager or his/her designee, before revoking or suspending any Massage Establishment Permit, shall provide the Owner with written notice of the alleged grounds for suspension or revocation and of a right to request a hearing in regards thereto.

C. Appeal Hearing and Notice of Decision.

1. The Owner(s) shall have the right to appeal from a decision by the City Manager or his/her designee to suspend or revoke a Massage Establishment Permit by filing with the City Clerk a written notice of appeal, specifying the grounds for such appeal, within ten (10) days after the decision has been served on the Owner(s).
2. Such appeal shall be heard by an Administrative Hearing Officer designated by the City Manager or his/her designee, as follows:
  - a. All Administrative Hearing Officers shall be impartial third parties and shall not have any pecuniary interest in the proceeding over which he or she is presiding, nor any pecuniary interest in the outcome thereof.
  - b. The Administrative Hearing Officer shall hear the appeal within ninety (90) days after the notice of appeal is received by the City Clerk. The Owner(s) shall be given not less than fifteen (15) days written notice of the date, time and location of appeal hearing.
  - c. The Administrative Hearing Officer shall consider all relevant evidence at the hearing, may continue the hearing, and may require such evidence and legal briefing as may be helpful in addressing issues raised by the appeal. The Administrative Hearing Officer shall not be limited by the technical rules of evidence.
  - d. Not more than thirty (30) days following the conclusion of the hearing, the Administrative Hearing Officer shall issue a written decision as to whether the application shall be granted or denied. The written decision shall be served on the Owner(s) as provided in Code of Civil Procedure Section 1094.6, with a copy served on the City Manager or his/her designee. The written decision of the Administrative Hearing Officer shall be final and shall only be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

#### **5.56.260 Enforcement and Penalty for Violation.**

A. Any Massage Establishment operated, conducted, or maintained contrary to the provisions of this Chapter shall be, and is hereby declared to be, unlawful and a public nuisance, and the City may, in addition to or in lieu of prosecution in a criminal action under this Chapter, commence any action or proceedings for the abatement, removal, and enjoinder thereof, in the manner provided by law, and shall take such other steps, and shall apply to such courts or court as may have jurisdiction to grant such relief as will abate or remove such Massage Establishment, and restrain and enjoin any person from operating, conducting, or maintaining a Massage Establishment contrary to the provisions of this Chapter.

B. Cumulative Remedies. The remedies provided herein are not exclusive, and in the event of any violation of this chapter, the City may pursue any and all administrative, civil, and criminal remedies, as provided by law or equity, including all remedies under Title 4 of this code.

C. Unless otherwise exempted by the provisions of this Chapter, every person, whether acting as an individual, Owner, Operator, employee of or person retained by the Owner or Operator, including an independent contractor, or whether acting as a mere helper for the Owner or Operator, or whether acting as a participant or worker in any way, who practices Massage Therapy or operates a Massage Establishment in violation of this Chapter, shall be guilty of a misdemeanor, punishable by up to six (6) months in county jail and/or a fine of up to \$1,000.00; however, the City attorney may reduce the penalty to an infraction as follows:

1. \$100.00 for the first offense;
2. \$200.00 for the second offense; and
3. \$1,000.00 for each offense thereafter.

D. Any massage establishment operated, conducted, or maintained contrary to the provisions of this code shall be unlawful and a public nuisance, and the City may commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in a manner provided by law.

E. A separate offense occurs for each day during any part of which any violation of, or failure to comply with, any provision of this Chapter is committed, continued, maintained, or allowed.

#### **5.56.270 Applicability to existing Massage Establishments.**

A. Retroactive. It is the express intent of the City that the provisions of this Chapter shall apply to all current Massage Therapists, Massage Establishments, and Owners.

B. Any current Owner of a Massage Establishment on the effective date of the ordinance codified in this Chapter pursuant to a valid City-issued business license shall be required to obtain a City Massage Establishment Permit within six (6) months from the effective date of the ordinance codified in this Chapter, or earlier upon revocation of the business license. Failure to do so shall be a violation of this Chapter and subject to the penalties herein.

C. Any current individual who provides Massage Therapy for compensation within the City shall be required to obtain certification by the CAMTC as a Certified Massage Professional in good standing within six (6) months from the effective date of the ordinance codified in this Chapter. Failure to do so shall be a violation of this Chapter and subject to the penalties herein.

#### **5.56.280 Severability.**

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. In addition, the City council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

**Section 3. SEVERABILITY**

That the City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

**Section 4. AMENDING OF BAIL SCHEDULE**

That the City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

**Section 5. EXECUTION AND CERTIFICATION**

That the City Clerk is directed to do all things necessary to cause the execution of this ordinance immediately upon its adoption and shall thereafter certify to the passage of this ordinance and cause the same to be published according to law.

**Section 6. EFFECTIVE DATE**

That this ordinance shall take effect thirty (30) days after its second reading by the City Council.

**PASSED AND ADOPTED** by the City Council of the City of Desert Hot Springs at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2022 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

\_\_\_\_\_  
Scott Matas, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

DRAFT