

CHAPTER 12

MESSAGE ESTABLISHMENT OPERATIONS

(621,626,632,1605,1627,2282,2697,3184,4315,4957,5031)

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PURPOSE

The purposes of this Chapter are to:

- (1) Enhance the professionalism of the massage service industry, to protect the health and safety of the public, by requiring massage therapists to have thorough knowledge of anatomy, physiology and an understanding of the relationship between the structure and the functions of the tissues being treated; and (4957, 5031)
- (2) Assure the integrity of the massage service industry by reducing unprofessional practices. (4957, 5031)

5-12-1: DEFINITIONS.

The following words and phrases, wherever used in this Chapter, shall be construed as defined in this Section unless, from the context, a different meaning is intended: (4957, 5031)

- (1) **APPLICANT:** A person who applies for a manager license or a massage establishment license. (4957, 5031)

- (2) **CLIENT:** An individual who enters into an agreement for massage therapy for a fee, income or compensation of any kind within the City. (4957, 5031)
- (3) **CONTROLLING PERSON:** Means (A) any individual who has a twenty percent (20%) or greater interest in the ownership or the earnings of the business and (B) those individuals listed in Section 5-12-20(C)(1)-(3). (4957, 5031)
- (4) **DESIGNATED AGENT:** The individual designated by the applicant who will be the responsible party to receive City notices pursuant to this Chapter. (4957, 5031)
- (5) **EMPLOY:** To hire, or to engage or authorize the services of, without regard to compensation, any individual, on a full-time, part-time, or contract basis, whether or not the person employed, hired or engaged is denominated an employee or independent contractor. (4957, 5031)
- (6) **EMPLOYEE:** Any person who performs any service at a massage facility on a full-time, part-time or contract basis, whether or not the person is designated an employee or independent contractor. Employee does not include a person exclusively at the massage facility for repair or maintenance of the massage facility or for the delivery of goods to the licensee. (4957, 5031)
- (7) **KNOWINGLY:** With respect to conduct or a circumstance described herein, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission. (4957, 5031)
- (8) **LICENSEE:** The person who receives a massage establishment license or manager license, and in whose name a license has been issued by the Licensing Office pursuant to this Chapter. (4957, 5031)
- (9) **MANAGER:** An individual authorized by the massage establishment licensee to exercise overall operational control of the business, to supervise employees, and to fulfill all of the duties and functions required of a manager by this Chapter. (4957, 5031)
- (10) **MASSAGE OR TOUCHING TECHNIQUES:** Any of the following named subjects and methods of treatment intended for use upon or in connection with the human body: oil rubs; alcohol rubs; salt glows; hot or cold packs; tub, shower, table or cabinet baths; herbal wraps; and touching procedures upon the external parts of the body by use of the hands, forearms, elbows, knees or feet, or by any electrical, mechanical or vibratory apparatus, including stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage and tapotement. (4957, 5031)
- (11) **MASSAGE THERAPIST:** A person who is licensed pursuant to Chapter 42 of Title 32 of the Arizona Revised Statutes to engage in the practice of massage therapy. (4957, 5031)
- (12) **MASSAGE THERAPY:** Includes any of the following that are undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement, or provide general or specific therapeutic benefits, including, but not limited to stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage, tapotement, and any other non-incidentally touching such as:
 - (1) The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head. (4957, 5031)

- (2) The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees or feet or handheld mechanical, electrical, water or vibratory devices. (4957, 5031)
- (3) Any combination of range of motion, directed, assisted or passive movements of the joints. (4957, 5031)
- (4) Hydrotherapy, including, but not limited to tub, shower or cabinet baths, and the application of water, hot and cold packs or wraps. (4957, 5031)
- (5) Any other therapeutic application of wraps, oils, alcohol rubs, skin brushing, salt glows and similar applications of products to the skin. (4957, 5031)

The following techniques and procedures are beyond the scope of this license: diagnosis, prescription of medicines or drugs, administering of injections, colon irrigation, performing minor surgery, and administering cranial, costal, or spinal adjustments as taught in medical, osteopathic, or chiropractic colleges. (Costal or spinal massage is permissible with a massage therapy license.) (4957, 5031)

- (13) **MESSAGE ESTABLISHMENT:** Any place of business or establishment wherein any of the subjects or methods of treatment listed in paragraphs (10) or (12) are administered, practiced or used, or from which is dispatched a person for the purpose of administering, practicing or using any of the subjects or methods of treatment listed in paragraphs (10) or (12). (4957, 5031)
- (14) **PERSON:** A corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual. It includes a trustee, receiver, an assignee, or similar representative. (4957, 5031)
- (15) **PRIVATE ANATOMICAL AREAS:** The genitals, perineum, and anal region of any person and the area of the breast that includes the areola and the nipple of any female person. (4957, 5031)
- (16) **TEMPORARY MANAGER:** An individual authorized by the licensing office to exercise overall operational control of the business, to supervise employees, and to fulfill all of the duties and functions required of a Manager by this Chapter on a temporary basis. (5031)

5-12-2: ADMINISTRATION; BUSINESS LICENSING AND REVENUE COLLECTIONS ADMINISTRATOR; DUTIES, APPEALS. (4957, 5031)

- (A) It shall be the duty and responsibility of the Business Licensing and Revenue Collections Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing and Revenue Collections Administrator shall issue, renew, deny, suspend, or revoke massage establishment licenses or manager licenses in accordance with this Chapter. (4957, 5031)
- (B) Any party aggrieved by a decision of the Business Licensing and Revenue Collections Administrator under this Chapter may appeal within ten (10) calendar days after being sent, by registered or certified mail, notice of such decision. The appeal shall be in writing, shall state the grounds for the appeal, and shall be sent to the Business Services Director. The Business Services Director, or designated representative, shall schedule a hearing within thirty (30) calendar days of receipt of the appeal and render a decision within sixty (60) calendar days of the hearing. (4957, 5031)

5-12-3: NEW LICENSE APPLICATION; FEE. (4957, 5031)

- (A) Any person desiring to obtain a massage establishment or manager license shall apply to the Licensing Office, who shall refer such application to the Chief of Police or designated representative for appropriate investigation and fingerprinting. Each application shall be accompanied by the fee required in accordance with the current Schedule of Fees and Charges. (4957, 5031)
- (B) Upon approval, and prior to the issuance of a massage establishment or manager license, the applicant shall pay a first year license fee in accordance with the current Schedule of Fees and Charges. (5031)

5-12-4: MESSAGE THERAPISTS; LICENSING OF MESSAGE ESTABLISHMENTS REQUIRED; EXCLUSIONS. (4957, 5031)

- (A) It is unlawful for any person to practice or in any manner to claim to practice massage therapy without first obtaining and maintaining in effect a current, unrevoked and unsuspended massage therapist license as required by Arizona Revised Statutes and as required by this Chapter. (4957, 5031)
- (B) It is unlawful for any person to conduct or operate a massage establishment without first obtaining and maintaining in effect a current, unrevoked and unsuspended massage establishment license as required by this Chapter. (4957, 5031)
- (C) It is unlawful for any person licensed as provided in this Chapter to operate under any name or conduct business under any designation not specified in such license. (4957, 5031)
- (D) It is unlawful for any massage establishment licensed as provided in this Chapter to conduct business at any location not specified in such license. (4957, 5031)
- (E) The provisions of subsection B shall not apply to a place of business or establishment wherein all persons offering massage or touching techniques or massage therapy are licensed as a barber, aesthetician, cosmetologist, or nail technician pursuant to Arizona Revised Statutes, and who practice within the scope of that person's license. (4957, 5031)

5-12-5: MESSAGE ESTABLISHMENT LICENSE APPLICATION; CONTENTS; BUSINESS HOURS. (4957, 5031)

Each application for a massage establishment license shall consist of, as applicable, the following:

1. Applicant full legal name, business name, business phone number, legal form of applicant, current residential phone number, and current residence or legal address of the applicant. (4957, 5031)
2. Applicant(s) physical description, and date and place of birth. (4957, 5031)
3. Any other names by which the applicant(s) has been known. (4957, 5031)
4. The address at which the applicant(s) desires to do business. (4957, 5031)

5. The mailing address for purposes of receiving City notices and other licensing correspondence relating to the applicant, the licensee, or the enforcement of this Chapter. (4957, 5031)
6. Business hours. The business hours submitted pursuant to this Chapter shall not be between 12:00 midnight and 6:00 A.M. (4957, 5031)
7. Applicant(s) residence addresses for the five-year period prior to the date of the application, and the dates of residence at each. (4957, 5031)
8. The name or names of all managers, approved temporary managers, and the designated agent. (4957, 5031)
9. The name or names of all controlling persons. (4957, 5031)
10. Applicant's business, occupation and employment history for the five-year period immediately preceding the date of the application, including addresses and dates of employment. (4957, 5031)
11. Written proof, in the form of a current driver's license with picture, or other current picture identification document issued by a governmental agency, that the applicant has reached the age of eighteen years. (4957, 5031)
12. The business license history of the applicant(s); whether the applicant(s), while operating in this or another city or state under license, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation. (4957, 5031)
13. All applicant(s) felony and misdemeanor convictions, excluding those for civil traffic offenses, and the grounds for such convictions. (4957, 5031)
14. The Articles of Incorporation, Articles of Organization, or Certificate of Limited Partnership, together with any amendments thereto, for the applicant, as applicable. (4957, 5031)
15. A list of services to be offered by the massage establishment. (4957, 5031)
16. A clearly legible sketch or diagram showing the configuration of the overall business premises that includes:
 - A. The location of all interior doors, walls, curtains and room dividers. (4957, 5031)
 - B. A description of the use of each interior space or room, including a designation, by type of use, of each room or space available for massage or touching techniques or massage therapy by the therapist. (4957, 5031)
 - C. A designation of each room or space that is being, or is intended to be, leased, subleased, or licensed for use by any person other than the applicant and a description of its intended and actual use. (4957, 5031)
 - D. A designation of each room or space that is being, or is intended to be, leased, subleased, or licensed for use by any person other than the applicant for purposes of offering massage or touching techniques or massage therapy and a description of its intended and actual use. (4957, 5031)

The sketch or diagram need not be professionally prepared but shall be drawn on one page measuring 8 ½ inches by 11 inches with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. For purposes of this paragraph a “wall” shall include any interior barrier, including transparent glass that extends more than fifty-four inches from the level of the finished floor. (4957, 5031)

17. Such other identification and information as the Licensing Office may require. (4957, 5031)

5-12-6: MANAGER LICENSE APPLICATION; CONTENTS. (4957, 5031)

An applicant for a manager license shall submit the following:

1. Full legal name, physical description, and date and place of birth. (4957, 5031)
2. Any other names by which the applicant has been know. (4957, 5031)
3. Current residence address, mailing address and telephone number. (4957, 5031)
4. All residence addresses for the five-year period immediately prior to the date of application, and the dates of residence at each. (4957, 5031)
5. Employment history for the five-year period preceding the date of application with dates and addresses for each. (4957, 5031)
6. Written proof, in the form a of current driver’s license with picture, or other current picture identification document issued by a governmental agency, that the applicant has reached the age of eighteen years. (4957, 5031)
7. All felony and misdemeanor convictions, excluding those for civil traffic offenses, and the grounds for each. (4957, 5031)
8. The business license history of the applicant; whether the applicant, while operating in this or another city or state under license, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation. (4957, 5031)
9. Such other identification and information as the Licensing Office may require. (4957, 5031)

5-12-7: INFORMATION UPDATE. (4957, 5031)

A. Except as otherwise provided herein, any change in the information required to be submitted by this Chapter shall be submitted to the Licensing Office on the form proscribed by the Licensing Office for that purpose. (4957, 5031)

B. Implementing changes in the services offered by a massage establishment, changes in the use or configuration of the premises of a massage establishment, additions or substitutions of a manager, temporary manger, or designated agent, and any change in the business hours without written approval or written acknowledgement from the Licensing Office is unlawful. (5031)

5-12-8: LICENSE APPLICATION INVESTIGATION. (4957, 5031)

Any applicant for a license issued pursuant to this Chapter shall present the completed application to the Licensing Office containing all of the information requested on the application and corresponding documents as proscribed in this Chapter. Each person applying for a City massage establishment license shall submit a full set of fingerprints to the City, or designee, on forms approved by the Licensing Office, including fingerprints for all controlling persons. All individuals applying to be establishment managers shall also submit a full set of fingerprints as set forth in the preceding sentence. The fingerprints will be used to obtain a state and federal criminal records check in accordance with A.R.S. 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. The Police Department shall have a reasonable time within which to investigate the application and background of the applicant, controlling persons and manager. Based on such investigation, the Police Department shall recommend to the Licensing Office approval or denial of the license. (4957, 5031)

5-12-9: MASSAGE ESTABLISHMENT LICENSE; SPECIAL REQUIREMENTS. (4957, 5031)

- A. No massage establishment license shall be issued: if the applicant or a controlling person has been convicted within the last five years of any felony or misdemeanor offense having a reasonable relationship to the functions of a massage establishment licensee, if the application was falsified, if the applicant or a controlling person has an outstanding warrant for his or her arrest, or if the applicant or a controlling person is not in compliance with any provision of this Chapter. (4957, 5031)
- B. No massage establishment license shall be issued if the applicant or controlling person has been convicted within the last five years of any offense proscribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code (Title 13, Arizona Revised Statutes), or by Mesa City Code, Title 6, Police Regulations, or any offense committed outside this state or city that if committed in this state or city would constitute a violation of any offense proscribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code or by Title 6 of the Mesa City Code. (4957, 5031)
- C. No massage establishment license shall be issued if the applicant or controlling person(s) has any felony or misdemeanor charge(s) pending in a court of competent jurisdiction having reasonable relationship to the functions of a massage establishment. The license will not be processed until such charges are adjudicated. (5031)
- D. An applicant for a massage establishment license, a controlling person for a licensee, a manager, or a licensee shall permit representatives of the Police Department, and any other federal, state, county, or city agency in the performance of any function connected with the enforcement of any code, statute or regulation relating to human health, safety or welfare of structural safety, normally and regularly conducted by such agency, to inspect the premises of a massage establishment for the purpose of ensuring compliance with the law, at any time it is lawfully occupied or open for business. Inspection of rooms occupied by a patron shall not commence until the patron has been given reasonable opportunity to dress, gather his or her personal effect and exit the room. (4957, 5031)
- E. A massage establishment licensee shall comply with the following requirements at all times: (4957, 5031)
 - 1. A readable sign shall be permanently affixed at the main entrance to the business identifying the business as a massage establishment. (4957, 5031)

2. Lighting of ten foot candles, measured at a height of 30 inches at the approximate center of the room or enclosure, shall be provided in each room or enclosure where services are performed on patrons. (4957, 5031)
 3. Ventilation shall be provided in accordance with Title 4 of the Mesa City Code. (4957, 5031)
 4. Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any of the subjects or methods of treatment listed in Section 5-12-1 (10) or (12). (4957, 5031)
 5. Hot and cold running water, tempered by means of a mixing valve faucet, shall be provided at all times. (4957, 5031)
 6. Closed cabinets shall be provided, and used, for the storage of clean linens. (4957, 5031)
 7. Notwithstanding any other requirement of this Chapter, a minimum of one shower or tub shall be provided for any establishment offering any hydrotherapy services including whirlpool baths, saunas, steam baths, and herbal wraps. (4957, 5031)
 8. Any pool or spa shall be issued a permit and inspected as required by Title 4 of the Mesa City Code or Maricopa County, as applicable. (4957, 5031)
 9. All walls, ceilings, floors, showers, bathtubs, steam rooms, and all other physical facilities within the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilets and wash basins shall be thoroughly cleaned each day business is in operation. Shower compartments and bathtubs, where provided, shall be thoroughly cleaned after each use. (4957, 5031)
 10. Clean and sanitary sheets and towels shall be provided for each patron of the establishment. The head rest of each table shall be provided with a clean and sanitary covering for each patron. (4957, 5031)
 11. All wash basins within an establishment shall: have hot and cold running water, tempered by means of a mixing valve faucet; provide sanitary towels placed in permanently installed dispensers or upon a permanently attached roll dispenser; and provide soap in a soap dispenser that is placed on or near the wash basin. A hand wash basin shall be provided in each treatment room providing hydrotherapy services, including whirlpool baths, saunas, steam baths and herbal wraps. (4957, 5031)
- F. It is unlawful for any person to knowingly employ any other person to offer massage therapy who does not hold a current, unrevoked and unsuspended massage therapy license issued by the State of Arizona. (4957, 5031)
- G. It is unlawful to employ a massage therapist whose true name and state-issued massage therapist license number has not been previously provided to the Licensing Office on the form proscribed by the Licensing Office for that purpose. (4957, 5031)
- H. The name of any person provided to the Licensing Office pursuant to Subsection F whose employment at the massage establishment has terminated shall be reported to the Licensing Office, on the form proscribed by the Licensing Office for that purpose, within ten (10) calendar days after termination. (4957, 5031)

- I. A massage establishment licensee shall file with the Licensing Office, on the form provided by the Licensing Office for that purpose, the name and license number of each person authorized to fulfill the functions of a manager at the massage establishment. It shall be the responsibility of the massage establishment licensee to have adequate manager coverage on site during all times the establishment is open for business. During any period of time that a massage establishment does not have a properly licensed manager recorded with the Licensing Office pursuant to this Subsection, the massage establishment licensee, controlling person(s), or up to two (2) licensed therapists may be authorized to serve as a temporary manager provided they are in compliance with the requirements listed in Section 5-12-10. The establishment licensee must request the temporary authorization on the form provided by the Licensing Office (4957, 5031)

Once the establishment licensee receives written approval from the Licensing Office, the person(s) approved shall become temporary manager(s) at the specified location for a period not to exceed sixty (60) calendar days from the date on the approval letter. A massage establishment licensee shall not be granted more than one approval in a calendar year unless the Business Licensing and Revenue Collections Administrator grants up to one additional approval for good cause at the sole discretion of the Administrator. (5031)

The establishment licensee shall ensure the new manager candidate(s) applies for a manager license within fourteen (14) calendar days from the date of the approval letter sent by the Licensing Office and that the Licensing Office has received the completed application(s) within the fourteen (14) calendar day requirement. If the Licensing Office has not received the manager application(s) within the time specified above, the approval for the temporary manager(s) shall be automatically rescinded and the establishment may not operate until a licensed manager is approved by the Licensing Office. (5031)

- J. It is unlawful for any person to knowingly employ at a massage establishment a manager or temporary manager who has been convicted within the previous five years of any of the offenses listed in Section 5-12-10. (4957, 5031)
- K. It is unlawful for any person to offer massage or touching techniques or massage therapy in any room or space of the business that has not been specifically identified as a room or space available for those services on the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5. (4957, 5031)
- L. It is unlawful for any person to offer massage or touching techniques or massage therapy in a room or space designated as leased, subleased or licensed for use by any other person on the sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5. (4957, 5031)
- M. A massage establishment applicant shall be in compliance with Title 11 of the Mesa City Code on the date of application. (4957, 5031)
- N. A massage establishment applicant or licensee shall comply at all times with Title 11 of the Mesa City Code. (4957, 5031)
- O. A massage establishment applicant shall be in compliance with Title 4 and Title 7 of the Mesa City Code on the date of application. (4957, 5031)
- P. A massage establishment applicant or licensee shall comply at all times with Title 4 and Title 7 of the Mesa City Code. (4957, 5031)

- Q. It is unlawful for any massage establishment to remain open for business, to provide services, to dispatch massage therapists, or to permit massage therapists to work off the premises on behalf of that massage establishment at any time between the hours of 12:00 midnight and 6:00 A.M. (4957, 5031)
- R. It is unlawful for a massage establishment to be open for business during hours that have not been provided and approved by the Licensing Office as required by this Chapter. (4957, 5031)
- S. It is unlawful for any massage establishment to be open for business without a licensed massage manager or temporary manager in compliance with Subsection (I) on duty. (5031)
- T. Notwithstanding any other provision of this Chapter, the Business Licensing and Revenue Collections Administrator may, in his or her discretion, delay the granting or denial of a massage establishment license, upon the submission of a complete application, for a period of up to ninety (90) calendar days if there exists, or did exist within the sixty (60) calendar day period prior to the date the application was first submitted, an active massage establishment license at the location for which the application was submitted and there also exists a Police Department report documenting a violation of this Chapter at that establishment or a state prosecution of that existing establishment relating to compliance with any of the provisions of this Chapter. For purposes of this Section, an active massage establishment license includes a license that has been suspended or revoked, provided that a revoked license is no longer active after passage of the period of time for appeal with no appeal taken, or after the Business Services Director has ruled in the event an appeal is taken and the decision is in the City's favor. Notwithstanding any other provision of this Subsection, any license subject to a judicial stay or injunction is an active license. (4957, 5031)
- U. The applicant for any massage establishment license for a location at which a massage establishment license was revoked or suspended within the previous six (6) months shall provide to the Licensing Office a sworn statement, in a form proscribed by the Licensing Office, verifying that no person qualified to own, control or manage a massage establishment is involved in the ownership, control or management of the applicant. The Licensing Office may also request such documents as are reasonably believed necessary to verify any of the information in the sworn statement. The failure to provide this sworn statement or supporting information shall be cause for denial of the massage establishment application. (4957, 5031)
- V. A massage establishment license shall not be issued for a physical space at which a licensed massage establishment is in operation. For purposes of this Subsection, there shall be a rebuttable presumption that a location with an active massage establishment license has a massage establishment in operation. (4957, 5031)
- W. Any massage establishment application that is not in full compliance with this Chapter sixty (60) calendar days after initial filing shall be denied, provided that the Licensing Office may grant an additional period of up to ninety (90) calendar days upon written application, prior to the expiration of the sixty-day period, demonstrating the occurrence of circumstances that were beyond the applicant's control or other, similar good cause. Nothing in this Subsection shall be construed to prevent the Licensing Office from denying a license as soon as a legal basis exists to do so. (4957, 5031)

5-12-10: MANAGER LICENSE; SPECIAL REQUIREMENTS. (4957, 5031)

- A. No manager license shall be issued if the applicant: (4957, 5031)
 - 1. Has been convicted within the last five (5) years of any:
 - a. Felony or misdemeanor offense having a reasonable relationship to the operation of a massage establishment; (4957, 5031)

- b. Offense proscribed by Mesa City Code, Title 6, Police Regulations or (4957, 5031)
 - c. Offense proscribed by Chapters 14, 32 or 35.1 of Title 13, Arizona Revised Statutes. (4957, 5031)
2. Falsified the application. (4957, 5031)
 3. Has an outstanding warrant for his or her arrest. (4957, 5031)
 4. Was a controlling person for a massage establishment license that was revoked within the previous five (5) years for an act or acts that occurred while the controlling person was a controlling person for the licensee. (4957, 5031)
 5. Is not in compliance with any provision of this Chapter. (4957, 5031)
 6. A massage manager license shall not be issued if the applicant has any felony or misdemeanor charges pending in a court of competent jurisdiction having reasonable relationship to the functions of a massage establishment. The license will not be processed until such charges are adjudicated. (5031)
- B. A manager or temporary manager shall not knowingly fail to ensure that a massage establishment at which he or she is employed is in compliance with Subsections 5-12-9(D) through (H), (K), (L), (N), and (P) through (R), and Section 5-12-12 of this Chapter. (4957, 5031)

5-12-11: APPLICATIONS; ADDITIONAL REQUIREMENTS. (4957, 5031)

No license shall be issued to an individual if the individual does not present one or more of the documents listed in A.R.S. 41-1080, as requested by the Licensing Office indicating that the individual's presence in the United States is authorized under federal law and complies with the Arizona Legal Workers Act. (4957, 5031)

5-12-12: DISPLAY OF LICENSE; IDENTIFICATION; RETENTION AND INSPECTION OF RECORDS. (4957, 5031)

- A. Every on duty person to whom a massage establishment license, massage therapist license or manager license has been granted shall display the license in a conspicuous place upon the business premises that is clearly visible to the general public upon entry to the business. All massage therapists shall produce their license and the establishment licensee is responsible for ensuring all licenses are properly displayed and current as well as ensuring all persons working in the establishment can produce a government issued identification document with a photo upon request from an authorized agent conducting an inspection pursuant to Section 5-12-9(D). (4957, 5031)
- B. A massage establishment shall maintain on the business premises for a period of ninety (90) calendar days after the date of last employment of each massage therapist, the following records for each massage therapist employed by that massage establishment: (4957, 5031)
1. A copy of the state-issued massage therapist license. (4957, 5031)
 2. A copy of the government issued identification document with photo provided pursuant to Section 5-12-12 (A). (5031)

- C. A massage establishment shall maintain on the business premises a copy of the most recent sketch or diagram required to be submitted to the Licensing Office pursuant to Section 5-12-5 (16). (4957, 5031)
- D. A licensee, manager, temporary manager or employee of a massage establishment shall make the records required to be maintained by Subsection B and Subsection C available for inspection upon demand by any law enforcement officer or City regulatory license inspections official during any period of time that the business premises are open to the public or lawfully occupied. (4957, 5031)

5-12-13: DISPLAY OF LICENSEE IDENTIFICATION CARD (4957, 5031)

Each massage therapist shall conspicuously display his or her State of Arizona massage therapist identification badge on his or her outer clothing at all times during which he or she is available for or administering massage therapy. (4957, 5031)

5-12-14: REQUIRED LOGS (4957, 5031)

All massage establishments shall maintain a log of all massage therapy administered. The log shall contain the following information: date, time, therapist name, type of each massage therapy administered, and the address where each massage therapy was administered. The log shall be retained for a minimum of one (1) year following any massage therapy. The massage therapy log shall be subject to inspection upon request, at the Police Department or other mutually agreeable location. (4957, 5031)

5-12-15: CHANGE OF LOCATION (4957, 5031)

A change of location of a massage establishment shall be approved by the Licensing Office, provided that the applicant is in compliance with all City ordinances and regulations, completes the appropriate location change application and submits a fee in accordance with the current Schedule of Fees and Charges. Notwithstanding any other provision of this Chapter, no massage establishment shall be operated or maintained at a location until approved by the Licensing Office and the establishment has a current unsuspended and unrevoked establishment license with the correct name and address posted in a conspicuous place in the establishment. (4957, 5031)

5-12-16: NON-TRANSFERABILITY OF LICENSE (5031)

Licenses issued in this Chapter are non-transferable; upon the sale or transfer of a massage establishment from person to person, the establishment license shall become null and void. (5031)

5-12-17: LICENSE RENEWAL (4957, 5031)

- A. Within one (1) year of the issue date for the previously effective license, all licensees under this Chapter wishing to remain licensed shall apply for renewal on a form established by the Licensing Office. The renewal form must be submitted no later than sixty (60) calendar days prior to the renewal date with the applicable renewal fee, as set forth in the current Schedule of Fees and Charges. In addition, a current listing of massage therapists, massage managers and temporary managers working at the establishment, including corresponding license numbers and dates of expiration, must be submitted with the massage establishment renewal application. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed. No license shall be renewed unless the licensee complies with all provisions of this Chapter. (4957, 5031)

- B. A licensee who fails to timely apply for renewal shall be subject to a penalty in accordance with the current Schedule of Fees and Charges. If the licensee fails to start the renewal process at least forty-five (45) calendar days prior to the license renewal date, the license shall expire and become null and void. Licensees who fail to apply to renew their license, yet who wish to continue operating or managing massage establishments, must file a new application for license and may not operate or manage a massage establishment until a new license has been issued. (4957, 5031)

5-12-18: FEES (4957, 5031)

All fees are nonrefundable and are not prorated. (4957, 5031)

5-12-19: OTHER UNLAWFUL ACTIVITIES; GENERAL PENALTY (4957, 5031)

- A. It is unlawful:

1. For any person to knowingly conduct or operate a massage establishment on the same business premises, as established under Section 5-12-5(16), whereon is also conducted or operated a sexually oriented business as defined in Title 6 of the Mesa City Code, or a bar, cocktail lounge, photography studio, model studio, art studio, motion picture studio/theater or telephone answering service. (4957, 5031)
2. For any person, while on the premises of a massage establishment, to knowingly provide or offer to provide any service:
 - a. In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires. (4957, 5031)
 - b. In such a manner that the person touches the private anatomical areas of the individual receiving the treatment. (4957, 5031)
 - c. While the person providing the treatment is clothed in a manner that fails to cover his or her private anatomical areas with an opaque material. (4957, 5031)
3. For any person on the premises of a massage establishment to intentionally view a completely or partially disrobed massage establishment client if the viewing is not related to treatment under current practice standards and is intended to appeal to the prurient interest of the massage therapist or the massage establishment client. (4957, 5031)
4. For any person, while on the premises of a massage establishment, to knowingly ask or direct a patron to:
 - a. Touch his or her own anus, genitals or breasts. (4957, 5031)
 - b. Touch the anus, genitals or breasts of any person on the premises. (4957, 5031)
 - c. Expose his or her genitals, anus or breasts to any person on the premises with the intention of appealing to the prurient interest of the massage therapist or the massage establishment client. (4957, 5031)

5. For any person, while on the premises of a massage establishment, to knowingly place any part of the body of a patron in direct or indirect contact with the anus, genitals or breasts of any other person on the premises. (4957, 5031)
 6. For any person, while on the premises of a massage establishment, to knowingly offer a patron any service in exchange for a gratuity or compensation of any description, that does not appear on the schedule of services required by this Chapter. (4957, 5031)
 7. For any person to knowingly operate or maintain a massage establishment at a location that has not been licensed by the Licensing Office. (4957, 5031)
 8. For any person, to knowingly use a massage establishment as living or sleeping quarters. (4957, 5031)
 9. To knowingly provide the services of a manager to a massage establishment without a manager license or temporary manager approval letter from the Licensing Office. (4957, 5031)
- B. For purposes of this Section, the word *touch* shall include physical contact that occurs through clothing or by means of any object. (4957, 5031)
- C. Whenever in this Chapter any act is prohibited or declared to be unlawful, and wherever in this Chapter the doing of an act is required or the failure to do any act is declared to be unlawful, the violation of any such provision of this Chapter is a class one misdemeanor. Each day any such violation continues shall constitute a separate offense. Revocation or suspension of a license shall not be a defense against prosecution. (4957, 5031)

5-12-20: DENIAL, SUSPENSION, REVOCATION, NONRENEWAL OF LICENSE: (4957,5031)

- A. Unless a specific provision of this Chapter establishes the penalty for a violation thereof, the license of a massage establishment or license of a manager may be denied, revoked, suspended, or denied renewal upon any one or more of the following grounds: (4957, 5031)
1. That the licensee is guilty of fraud in conducting the business of a massage establishment or of fraud or deceit in obtaining a license. (4957, 5031)
 2. That the licensee has been convicted within the past five (5) years in a court of competent jurisdiction of a felony or misdemeanor offense having a reasonable relationship to the functions of a massage establishment or a massage therapist. (4957, 5031)
 3. That the licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising. (4957, 5031)
 4. That the licensee is engaged in the business of massage therapist, manager, or massage establishment under a false or assumed name, or is impersonating another therapist or manager of a like or different name. (4957, 5031)
 5. That the licensee has violated any of the provisions of this Chapter. This paragraph shall apply regardless of the location at which the violation occurred. (4957, 5031)

6. That, in the case of a massage establishment, any person who did not qualify as a controlling person at the time the license was issued has acquired a 20% or greater interest in the licensee. (4957, 5031)
 7. That, in the case of a massage establishment, the massage establishment has operated at a location that has not been licensed for use by the Licensing Office. (4957, 5031)
 8. That, in the case of a massage establishment, the licensee has ceased to use the license for purposes of offering massage therapy. The failure to offer massage therapy at a massage establishment for thirty (30) consecutive calendar days shall create a rebuttable presumption that the licensee has ceased to use the license for purposes of offering massage therapy. (4957, 5031)
 9. That, in the case of a massage establishment, the licensee has failed to maintain in the records of the Licensing Office, the name of an individual as a designated agent. (4957, 5031)
- B. Unless a specific provision of this Chapter establishes the penalty for a violation thereof, the license of a massage establishment or license of a manager shall be denied, revoked, suspended, or denied renewal upon any one (1) or more of the following grounds: (4957, 5031)
1. That any licensee or applicant has been convicted in a court of competent jurisdiction within the last five (5) years of a felony or misdemeanor involving prostitution, indecent exposure, pornography, or if the application is false in any regard. (4957, 5031)
 2. That the licensee knows or should have known that prostitution, indecent exposure, or pornographic acts are occurring or have occurred in the operation of the massage establishment belonging to the licensee. (4957, 5031)
 3. That the licensee, manager, temporary manager or designated agent has photographed a customer, while the customer was on the premises of a massage establishment and located within any treatment room, restroom, locker room or dressing room, without the express, written permission of that customer. For purposes of this paragraph the work "photographed" shall mean the use of any electronic or mechanical device to record, reproduce or transmit an optical image. (5031)
- C. The establishment license shall be denied if any of the following persons would be disqualified under this Chapter: (4957, 5031)
1. The president or other executive officers of a corporate applicant; (4957, 5031)
 2. Each general partner of an applicant that is a limited partnership or any partner of a non-limited partnership applicant; (4957, 5031)
 3. The managing member(s) or officer(s) of the applicant; (4957, 5031)
 4. Any controlling person of the applicant. (4957, 5031)
 5. Sole proprietor. (5031)

5-12-21: APPLICATION AFTER DENIAL, SUSPENSION, REVOCATION OR NONRENEWAL OF LICENSE: (4957, 5031)

No person may apply for a license within one (1) year from the denial of any such license to such applicant or from the suspension, revocation, or nonrenewal of any such license, unless the cause of such denial, suspension, revocation, or nonrenewal has been, to the satisfaction of the Business Licensing and Revenue Collections Administrator, removed within such time. (4957, 5031)

5-12-22: EXEMPTIONS (4957, 5031)

The provisions of this Chapter shall not apply to:

1. Establishments whose employees are authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy, or acupuncture; (4957, 5031)
2. Establishments whose employees are acting as trainers for any bona fide amateur, semiprofessional, or professional athletic team or athlete. (4957, 5031)
3. Establishments whose employees are authorized by the laws of this state as barbers or cosmetologists, provided their activity is limited to the scope of their barber or cosmetology license; (4957, 5031)
4. Establishments whose employees are providing colon irrigation only. (4957, 5031)
5. Businesses that are operating solely as a school that is Arizona State Board of Massage Therapy-approved. (4957, 5031)

5-12-23: LICENSES; CUMULATIVE REGULATION (4957, 5031)

- A. The licenses required in this Chapter are in addition to any business or transaction privilege license required by the Mesa City Code. (4957, 5031)
- B. A massage therapist license does not authorize one to operate a massage establishment. (4957, 5031)
- C. An applicant for a massage establishment license need not have a massage therapist license. However, massage establishments shall employ only Arizona state-licensed massage therapists to perform massage therapy. (4957, 5031)
- D. A licensed massage therapist who operates as a sole practitioner and who has no employees must obtain a massage establishment license for the business location at which massage therapy is provided; however, no separate manager license is required. (4957, 5031)
- E. In accordance with Subsection (D), any massage establishment licensee who is not required to obtain a manager license must obtain, and produce upon request, a current form from the Licensing Office stating the establishment licensee is not required to have a manager license. (5031)