

ORDINANCE NO. 2023-20

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, AMENDING CHAPTER 11 OF THE PEORIA CITY CODE PERTAINING TO MASSAGE FACILITIES AND FUNCTIONALLY EQUIVALENT BODYWORK ESTABLISHMENT OPERATIONS, AMENDING SECTION 11-83 BY ADDING SECTION 11-162 THROUGH SECTION 11-183

THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 11 of the Peoria City Code is amended by amending Section 11-83 by adding Section 11-162 through Section 11-183 pertaining to Massage Facilities and Functionally Equivalent Bodywork Establishment operations, which shall read as follows:

Chapter 11 MASSAGE FACILITIES AND FUNCTIONALLY EQUIVALENT BODYWORK ESTABLISHMENT OPERATIONS

Sec. 11-162. Purpose; definitions.

(a) It is the purpose and intent of this chapter to protect the health, safety, and welfare of the residents of the City of Peoria by providing for the uniform regulation of massage establishments and bodywork establishments, and landlords and property owners of business complexes where massage establishments and bodywork establishments are located, in order to prevent illegal activity from occurring on the premises under the appearance of massage therapy or bodywork, and to establish sanitation, health, and operational standards.

(b) The below words and phrases wherever used in this chapter, whether or not the term is capitalized, shall be construed as defined in Section 11-162 unless, from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

(1) *Applicant* means a person who applies for a massage establishment or bodywork establishment license.

(2) *Bodywork* means the practice of a person using touch to manipulate tissue in the course of treatment or therapy provided to another person that does not constitute massage as defined in Arizona Revised Statute title 32, chapter 42. Bodywork may include the affectation of the human energy system or acupoints or QI meridians of the human body. Bodywork includes reflexology and its application of pressure to the feet, hands or ears.

(3) *Bodywork establishment* means a place where bodywork is offered.

(4) *Business complex* means real property improvements that are (i) on the same parcel of property; (ii) attached by walls or rooflines; or (iii) part of a group development as interpreted by the city planning manager, and that is owned by the same property owner.

(5) *City* means the City of Peoria, Arizona.

(6) *Client* means an individual who offers to pay for or receive massage therapy or bodywork, or receives massage therapy or bodywork at the massage or bodywork establishment.

(7) *Controlling person* means (i) any individual who has a ten percent (10%) or greater interest in the ownership or the earnings of the massage establishment or bodywork establishment, or (ii) any of the following persons for a licensee or applicant:

- a. The president or other executive officer of a corporation;
- b. Each general partner of a limited partnership or any partner of a non-limited partnership;
- c. The managing members or officers of a limited liability company/corporation; or
- d. A sole proprietor.

(8) *Designated agent* means the individual designated by the applicant to receive city notices under this chapter.

(9) *Employ* means to hire, engage, or authorize the services of any individual on a fulltime, part-time, or contract basis, without regard to compensation, whether or not the person employed, hired or engaged is denominated an employee or independent contractor.

(10) *Employee* means any person who performs any service at a massage establishment or bodywork establishment 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 establishment or bodywork establishment for repair or maintenance or for the delivery of goods.

(11) *Hearing Officer* means the budget and finance department director or his/her designee.

(12) *Knowingly* means with respect to conduct or a circumstance described in this chapter, that a person is aware of or believes that his or her conduct is of that nature or that the circumstances exist. It does not require any knowledge of the unlawfulness of the act or omission.

(13) *Landlord* means the lessor, lessee, property manager, managing agent, licensee or any person, other than the property owner, who has legal care or control of the business complex where a massage establishment or bodywork establishment is located. The term landlord does not include the applicant or licensee.

(14) *License* means a license issued pursuant to this chapter.

(15) *Licensee* means the person who receives a massage establishment or bodywork establishment license, and in whose name the license has been issued by the licensing office pursuant to this chapter.

(16) *Licensing office* means the division of the city's budget and finance department under the supervision of the city's tax and license manager.

(17) *Massage establishment* means a place where massage therapy is offered.

(18) *Massage therapist* means a person who is licensed under Arizona Revised Statute title 32, chapter 42 to engage in the practice of massage therapy as defined in Arizona Revised Statute § 32-4201(6).

(19) *Massage therapy* means as defined in Arizona Revised Statute § 32-4201(5).

(20) *On-site manager* means a person on the premises of the massage facility who has responsibility for the operations of the massage facility.

(21) *Person* means an individual, corporation, firm, partnership, association, organization or any other group acting as a unit as well as a trustee, receiver, assignee, or similar representative.

(22) *Property owner* means the person indicated on the records of the Maricopa County Assessor, or other official body, as the owner of record of the business complex. The term property owner does not include the applicant or licensee.

(23) *Police Department* means the City of Peoria Police Department. The chief of police refers to the Chief of the Peoria Police Department or their designee.

(24) *Private anatomical areas* means any part of the genitals, penis, vulva, anus, perineum, female areola or female nipple.

(25) *Responsible party* means any person who violates a provision of this chapter subject to a civil violation as set forth in Section 11-180.

(26) *Schedule of fees and charges* means the then-current adopted City of Peoria Schedule of Fees and Charges as established by resolution.

(27) *Touch* means direct or indirect oral contact with any part of the genitals, penis, vulva, anus, perineum, female areola or female nipple; or direct or indirect touching, fondling or manipulating of any part of the genitals, penis, vulva, anus, perineum, female areola or female nipple by any part of the body or by any object or causing a person to engage in such contact; or penetration into the penis, vulva or anus by any part of the body or by any object; or direct or indirect masturbatory contact with any part of the genitals, penis, vulva, anus, perineum, female areola or female nipple. The term shall include contact that occurs through clothing or by means of any object.

Sec. 11-163. Administration; Finance Director or designee; duties; appeals.

(a) In addition to the provisions of Section 11-83, it shall be the duty and responsibility of the Finance Director or designee to administer the provisions of this chapter. Pursuant to this duty, the Finance Director or designee shall issue, renew, deny, suspend, or revoke licenses in accordance with this chapter.

(b) Any party aggrieved by a decision of the Finance Director or designee under this chapter may appeal within ten (10) calendar days after being sent notice of such decision by mail. The appeal shall be in writing, shall state the grounds for the appeal, and shall be sent to the Finance Director or designee, who shall schedule a hearing with a hearing officer within thirty (30) calendar days of receipt of the appeal and the hearing officer will render a decision within sixty (60) calendar days of the hearing. A hearing under Section 11-163(b) will occur in the same manner as set forth in Section 11-181 below.

Sec. 11-164. New license application; fee.

(a) Any person desiring to obtain a license shall apply to the licensing office, who shall refer such application to the chief of police or designee for appropriate investigation. Each application shall be accompanied by the fee required in accordance with the schedule of fees and charges.

(b) Upon approval, prior to the issuance of a license, the applicant shall pay a license fee in accordance with the schedule of fees and charges.

Sec. 11-165. Massage therapists; licensing of a massage establishment and bodywork establishment required; exclusions.

(a) A person desiring to practice or in any manner to claim to practice massage therapy must first obtain and maintain in effect a current, unrevoked, and unsuspended massage therapist license as required by Arizona Revised Statutes and issued by the Arizona State Board of Massage Therapy.

(b) A person desiring to conduct or operate a massage establishment or bodywork establishment must first obtain and maintain in effect an unrevoked and unsuspended license as required by this chapter.

(c) Any person licensed as provided in this chapter must operate under the name or conduct business under the designation specified in such license.

(d) Any massage establishment or bodywork establishment licensed as provided in this chapter must only conduct business at the location(s) specified in such license.

Sec. 11-166. Massage establishment and bodywork establishment license application; contents; business hours.

The applicant for a license to operate a massage establishment or bodywork establishment shall be a controlling person of the massage or bodywork establishment. Each applicant for a license to operate a massage establishment or bodywork establishment shall furnish the following information:

(1) Applicant's full legal name, business name, current business and residential and cellular phone numbers, (legal form)? of applicant, current residence or legal address of the applicant, and current email address.

(2) If applicant is a natural person or sole proprietorship, applicant's physical description, and date and place of birth.

(3) Any other names by which the applicant is or has been known by at any time.

(4) The address of the proposed massage establishment or bodywork establishment.

(5) The mailing address and email for the purpose of receiving city notices and other licensing correspondence relating to the applicant, the licensee, or the enforcement of this chapter.

(6) The name and mailing address of the landlord and property owner for purposes of receiving city notices relating to enforcement under this chapter.

(7) A copy of any lease, license or other rental or occupancy agreement for the massage establishment or bodywork establishment location.

(8) Business hours of the massage establishment or bodywork establishment. The business hours submitted pursuant to this chapter must be in accordance with Section 11-170(m).

(9) Applicant's addresses of primary residence and the dates of residence at each address for the ten (10) year period immediately preceding the date of the application.

(10) The name and address of the designated agent. The designated agent must be able to receive correspondence at the address set forth in Section 11-166(5) above.

(11) The name of all controlling persons for the applicant.

(12) Applicant's business, occupation, and employment history for the ten (10) year period immediately preceding the date of the application, including addresses and dates of employment.

(13) A valid U.S. government issued identification such as a driver's license, identification card, or passport demonstrating the applicant is at least eighteen (18) years of age.

(14) The business license history of the applicant indicating whether the applicant, while operating under a business license or permit issued by any city, county, state or federal agency, or any professional or vocational organization, had its license or permit revoked or suspended, and the reason for such suspension or revocation.

(15) Applicant's felony arrest and felony and misdemeanor convictions for the ten (10) year period immediately preceding the date of application, including dismissals, expungements, or convictions that have been set aside, but excluding those for civil traffic offenses, and the dates and jurisdictions of the convictions.

(16) The articles of incorporation, articles of organization, or certificate of limited partnership, or similar formation document, together with any amendments thereto, for an applicant that is a business entity.

(17) Residential and business addresses and telephone numbers for all controlling persons of the massage establishment or bodywork establishment.

(18) The following information for each controlling person of a massage establishment or bodywork establishment: the individual's business occupation and employment history for ten (10) years preceding the date of the application; and the name and address of any massage establishment or bodywork establishment or similar business currently owned or operated by the individual whether inside or outside of the United States.

(19) From all controlling persons, a valid and current driver's license or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

(20) A signed statement from all controlling persons, the landlord, and property owner acknowledging that it is a class 3 misdemeanor under Arizona Revised Statute § 13-2908 to, by conduct either unlawful in itself or unreasonable under the circumstances, recklessly create or maintain a condition which endangers the safety or health of others, or to knowingly conduct or maintain any premises, place, or resort where persons gather for purposes of engaging in unlawful conduct.

(21) A schedule or list of services to be offered at the massage establishment or bodywork establishment.

(22) A clearly legible sketch or diagram showing the configuration of the overall business premises of the massage establishment or bodywork establishment that includes, at a minimum, all the following:

- a. The location of all interior doors, walls, curtains and room dividers.
- 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 bodywork or massage therapy.

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. The sketch or diagram need not be professionally prepared but shall be drawn on one (1) page measuring 8½ inches × 11 inches with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. For purposes of this Section 11-166(22) a "wall" shall include any interior barrier, including transparent glass, which extends more than fifty-four (54) inches from the level of the finished floor.

(23) Such other identification and information as the city may require.

Sec. 11-167. Manager, landlord and property owner responsibility.

No manager, landlord or property owner that has a massage establishment or bodywork establishment occupant, shall knowingly permit or negligently fail to take reasonable actions to prevent criminal activity from occurring in or on the premises of the massage establishment or bodywork establishment. A violation of this section is a civil violation.

Sec. 11-168. Employee and contractor information; updates.

(a) Within ten (10) calendar days of a licensed establishment opening, the licensee shall provide a list to the city of all employees and independent contractors who will provide massage therapy or bodywork, their employment position, date of hire, and a copy of their state issued massage therapist license if they will be performing massage therapy. Thereafter, the licensee shall submit a quarterly report to the city updating the information provided pursuant to this section to include all employees and independent contractors who provide massage therapy or bodywork at the establishment.

(b) A licensee shall report to the licensing office within ten (10) calendar days any of the following:

(1) Arrests or citations of any employees, independent contractors or controlling person of the massage establishment or bodywork establishment for any offense other than a civil traffic violation;

(2) Resignations, terminations or transfers of any employees or independent contractors of the massage establishment or bodywork establishment; and

(3) Any changes to the information provided to the licensing office pursuant to Sections 11-165 and 11-166.

(c) Except as otherwise provided in this chapter, any change in the information required to be submitted by this chapter shall be submitted to the licensing office on the form prescribed by the licensing office for that purpose.

Sec. 11-169. License application investigation.

(a) Any applicant for a license shall present the completed application to the licensing office containing all the information requested on the application and corresponding documents as prescribed in this chapter.

(b) Each person applying for a license shall submit a full set of fingerprints to the city in a manner approved by the licensing office, including fingerprints for all controlling persons. The fingerprints will be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with Arizona Revised Statute § 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.

(c) The police department, on behalf of the licensing office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data, of license applicants and controlling persons for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information shall be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension or revocation of a license.

(d) The police department shall have a reasonable time within which to investigate the application and background of the applicant and controlling persons. Based on such investigation, the police department shall recommend to the licensing office approval or denial of the license in accordance with this chapter.

Sec. 11-170. Massage establishment and bodywork establishment licenses; special requirements.

(a) No license shall be issued: (i) if the applicant or a controlling person has been convicted during the ten (10) year period immediately preceding the date of application of any felony or misdemeanor offense having a reasonable relationship to a massage establishment; (ii) if the application was falsified; (iii) if the applicant or a controlling person has an outstanding warrant for his or her arrest; (iv) if the applicant or controlling person had a massage establishment or bodywork establishment license revoked during the three (3) year period immediately preceding the date of application; (v) if an applicant or controlling person had a massage establishment or bodywork establishment license denied within one (1) year preceding the date of application; (vi) if within three (3) years immediately preceding the date of the application, the license of any massage establishment or bodywork establishment was revoked that was located at the same physical address or within the same business complex; or (vii) if the applicant or a controlling person is not in compliance with any provision of this chapter.

(b) No license shall be issued if the applicant or controlling person was convicted during the ten (10) year period immediately preceding the date of the application of any offense: (i) prescribed by Arizona Revised Statutes, title 13, chapters 14, 32, 23, or 35.1; (ii) similarly prescribed in this Chapter and otherwise by Peoria City Code; or (iii) any offense committed outside this state or city that, if committed in this state or city, would constitute a violation of any offense prescribed by Arizona Revised Statutes, title 13, chapters 14, 32, 23, or 35.1, or by this Chapter and otherwise by Peoria City Code.

(c) No license shall be issued if the applicant or controlling person has any felony or misdemeanor charge pending in a court of competent jurisdiction having a reasonable relationship to the functions of a massage establishment or bodywork establishment. A renewal license may be issued if the licensee or controlling person has a felony or misdemeanor charge pending in a court of competent jurisdiction having a reasonable relationship to the functions of a massage establishment or bodywork establishment; however, the issuance of such renewal license shall not prevent the city from taking any action prescribed in this chapter against the licensee should the licensee or controlling person be convicted of the pending charge.

(d) A licensee shall permit representatives of the police department and Peoria City Code Compliance, and any other federal, state, county, or local agency in the performance of any function connected with the enforcement of any code, statute or regulation relating to human health, safety or welfare or structural safety, normally and regularly conducted by such agency, to inspect the premises of a massage establishment or bodywork establishment for the purpose of ensuring compliance with the law, at any time it is lawfully occupied or open for business.

(e) A licensee shall comply with the following requirements at all times:

(1) A readable sign shall be permanently affixed to or immediately next to the main entrance of the massage establishment or bodywork establishment and shall identify the licensee's trade name or business name as it appeared on the license application.

(2) Reasonably adequate lighting, measured at a height of thirty (30) inches at the approximate center of the room or enclosure, shall be provided in each room or enclosure where services are performed on clients.

(3) Ventilation shall be provided in accordance with Peoria City Code.

(4) Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing massage therapy or bodywork.

(5) Hot and cold running water, tempered by means of a mixing valve faucet.

(6) Closed cabinets shall be provided and used for the storage of clean linens.

(7) Notwithstanding any other requirement of this chapter, a minimum of one (1) shower or tub shall be provided for any establishment offering any hydrotherapy services including whirlpool baths, saunas, steam baths, and herbal wraps.

(8) Any pool or spa shall be issued a permit and inspected as required by Peoria City Code or Maricopa County Code, as applicable.

(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.

(10) Clean and sanitary sheets and towels shall be provided for each client of the establishment. The head rest of each table shall be provided with a clean and sanitary covering for each client.

(11) All wash basins within an establishment shall: (i) have hot and cold running water, tempered by means of a mixing valve faucet; (ii) provide sanitary towels placed in permanently installed dispensers or upon a permanently attached roll dispenser; and (iii) 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.

(12) A massage establishment or bodywork establishment shall not have any entrance or exit way providing a direct passageway to any type of sleeping or living quarters.

(13) A massage establishment or bodywork establishment must have a public entrance door, or a window made of glass or transparent material with an unobstructed line of sight connected to the sales transaction area of the massage establishment or bodywork establishment, unless the establishment has no doors or windows on the exterior of the building in which the massage establishment or bodywork establishment is located. The line of sight may not be obstructed by any means, including the use of furnishings, window dressing, plywood, paper, or other opaque materials.

a. The unobstructed line of sight must permit a view of and from the sales transaction area through all exterior windows and public entrance and exit doors located in the sales transaction area.

b. The unobstructed line of sight must, at a minimum, extend from four (4) feet above the ground to at least seven (7) feet above the ground.

c. Any substance or material in conjunction with glazing material (i.e. window tint) placed on a transparent door or window required under Section 11-170(e)(13) to be unobstructed must have a light transmission of more than thirty-three percent (33%) plus or minus three percent (3%)

and a luminous reflectance no greater than thirty-five percent (35%) plus or minus three percent (3%).

d. The requirements set forth in Section 11-170(e)(13) do not apply to doors and windows within a massage establishment or bodywork establishment adjoining rooms where massage therapy is performed.

e. A licensee does not have to meet the requirements of Section 11-170(e)(13) if the licensee:

(i) Operates a massage establishment or bodywork establishment in which the licensee is the only massage therapist performing massage therapy or bodywork; and

(ii) The massage establishment or bodywork establishment consists of only one (1) room, not including any shower/bathing or bathroom facilities, as demonstrated in the sketch or diagram required to be submitted to the licensing office pursuant to Section 11-166(22).

(14) A massage establishment or bodywork establishment shall keep posted an unobscured multilanguage notice in the employee work area to be furnished by the city which outlines the crimes of sex trafficking (Arizona Revised Statute § 13-1307) and prostitution (Arizona Revised Statute § 13-3211) and provides contact information for the police department.

(15) A massage establishment or bodywork establishment shall not offer any massage therapy or bodywork services on a table shower.

(16) A massage establishment or bodywork establishment shall not advertise itself as a sexually oriented business as defined in Peoria City Code. A massage establishment or bodywork establishment shall not advertise for services except those the massage or bodywork establishment are licensed to provide and per A.R.S. § 32-4260.

(17) A massage establishment or bodywork establishment shall not permit massage therapy or bodywork to be performed in any area that shares any wall with any part of a childcare center.

(f) The name of any person provided to the licensing office pursuant to Section 11-170(l) whose employment at the massage establishment or bodywork establishment has terminated shall be reported to the licensing office, on the form prescribed by the licensing office for that purpose, within ten (10) calendar days after termination.

(g) An applicant and licensee shall be in compliance with all fire, building and zoning codes of the Peoria City Code.

(h) Any massage establishment or bodywork establishment application that is not in full compliance with this chapter sixty (60) calendar days after initial filing of the application shall be denied, provided the licensing office may grant an additional period of up to ninety (90) calendar

days upon written request of the applicant, prior to the expiration of the sixty-day period, if applicant demonstrates the occurrence of circumstances that were beyond the applicant's control or other, similar good cause. Nothing in this Section 11-170(h) shall be construed to prevent the licensing office from denying a license as soon as a legal basis exists to do so.

(i) A licensee shall not operate under any name or conduct business under any designation not specified in such license and the application submitted for such license.

(j) A licensee shall not conduct business at any location not specified on such license.

(k) A licensee shall not implement changes in the services offered by a massage establishment or bodywork establishment, change the use or configuration of the premises of the massage establishment or bodywork establishment, change the designated agent, or change the business hours of the massage establishment or bodywork establishment without providing written notice to the licensing office and receiving written approval from the licensing office of such change.

(l) A licensee shall not employ a massage therapist whose true name and Arizona state-issued massage therapist license number has not previously been provided to the licensing office on the form prescribed by the licensing office for that purpose.

(m) No massage establishment or bodywork establishment shall remain open for business, provide massage therapy or bodywork services, dispatch massage therapists or bodywork providers, or permit employees or independent contractors to work off the premises on behalf of the massage establishment or bodywork establishment at any time between the hours of 10:00 p.m. to 6:00 a.m. Clients cannot be on the premises of the massage establishment or bodywork establishment after 10:30 p.m. All massage therapy and bodywork must be concluded by 10:00 p.m., however other business activities related to the massage establishment or bodywork establishment may continue until 10:30 p.m. A massage establishment or bodywork establishment may only be open for business during hours that have been approved by the licensing office as required by this chapter. No massage establishment shall open, remain open for business or provide massage services unless a licensed massage therapist is on the premises. No bodywork establishment shall open, remain open for business or provide bodywork services unless a bodywork practitioner is on the premises.

(n) The ownership or control of the licensee shall not change during the term of the license such that a person, other than those listed on the application, would be deemed a controlling person for the licensee and either: (i) the new controlling person was not reported to the licensing office within ten (10) calendar days after he/she became a controlling person; or (ii) the new controlling person fails to meet the requirements that must be met by a controlling person as set forth in this chapter.

(o) The licensee must maintain in the records of the licensing office, the name of an individual as a designated agent.

(p) No licensee shall knowingly permit, or negligently fail to take reasonable actions to prevent, criminal activity to occur in or on a massage establishment or bodywork establishment.

(q) Any person performing bodywork shall wear a tag displaying their name and any person performing massage therapy shall wear a tag displaying their name and massage therapy license number issued by the State of Arizona.

(r) Violations of subsections (e)(1)-(e)(11), (e)(13), (f), (l), (p) are civil violations pursuant to Section 11-180. Violations of subsections (e)(12), (e)(14)-(e)(17), (g)-(k), (m)-(o), and (q) are criminal violations pursuant to Section 11-179(c).

Sec. 11-171. Public nuisance.

Any massage establishment or bodywork establishment operated contrary to the provisions of this chapter may be considered a public nuisance as defined in Arizona Revised Statute § 13-2917. The city may, in addition to any criminal prosecution that may occur, initiate proceedings for abatement, removal or enjoinder of the business in any manner authorized by law.

Sec. 11-172. Applications; additional requirements.

Every license shall be issued in accordance with applicable law, including Arizona Revised Statute § 41-1080. No license shall be issued to an individual if the individual does not present one or more of the documents listed in Arizona Revised Statute § 41-1080, indicating the individual's presence in the United States is authorized under federal law and complies with the Arizona Legal Workers Act.

Sec. 11-173. Display of license; identification; retention and inspection of records.

(a) A licensee shall post their license in a conspicuous place upon the business premises of the massage establishment or bodywork establishment in a location that is clearly visible to the general public upon entry into the business. Every on-duty person to whom an Arizona state-issued massage therapist license has been granted shall: (i) display the license or a clearly legible copy of the license in a conspicuous place upon the business premises in which they perform massage therapy that is clearly visible to the general public upon entry to the business; or (ii) maintain the license or a clearly legible copy of the license inside the massage establishment or bodywork establishment in a manner that allows for the license to be made readily available for inspection by the general public. The massage establishment or bodywork establishment licensee is responsible for ensuring all state-issued massage therapist licenses are

properly displayed and current for any persons performing massage therapy on the premises of the massage establishment or bodywork establishment.

(b) A licensee shall maintain on the business premises all the following records for each employee or independent contractor providing services from the day of first employment or contracting through a period of ninety (90) calendar days after the date of last employment or contracting:

(1) For employees or independent contractors providing massage therapy, a copy of the state issued massage therapist license.

(2) For all employees or independent contractors, a copy of a government issued identification document with photo of the massage therapist or bodywork provider. The copy of the government issued identification must clearly depict the photo of the individual and all information must be legible.

(c) A licensee shall maintain on the licensed business premises a copy of the most recent sketch or diagram required to be submitted to the licensing office pursuant to Section 11-166(22).

(d) A licensee or employee of a massage establishment or bodywork establishment shall make the records required to be maintained by Section 11-173 available for inspection upon demand by any law enforcement officer, code enforcement officer, or city regulatory license inspection official during any period of time that the establishment is open to the public or lawfully occupied.

Sec. 11-174. Required logs.

A licensee shall ensure a secure and confidential log, written clearly in English, is maintained at the massage establishment or bodywork establishment of all massage therapy or bodywork administered. The log shall contain the following information: date, time, service provider's full name, home address, phone number, Arizona massage therapy license number (as applicable), and type of each massage therapy or bodywork administered. The log shall be updated prior to the therapy or bodywork being administered. The log shall be retained for a minimum of one (1) year following any massage therapy or bodywork. The log shall be subject to inspection upon request by an agent or representative of the city. The inspection of the log will occur at the police department or other mutually agreeable location.

Sec. 11-175. Location.

A separate license shall be required for each massage establishment or bodywork establishment location in

the city. A change of location of a massage establishment or bodywork establishment shall be approved by the licensing office and will necessitate the issuance of a new license that will be issued to the licensee provided that the licensee is in compliance with all city ordinances and regulations, completes the appropriate location change application, and submits a fee in accordance with the schedule of fees and charges.

Notwithstanding any other provision of this chapter, no massage establishment or bodywork establishment shall be operated or maintained at a location until approved by the licensing office and the establishment has a current unsuspended and unrevoked license with the correct name and address posted in a conspicuous place in the establishment as required in Section 11-173.

Sec. 11-176. Non-transferability of license.

Licenses issued pursuant to this chapter are non-transferable; upon the sale or transfer of a massage establishment or bodywork establishment from person to person, the establishment license shall become null and void.

Sec. 11-177. Term of license; license renewal.

(a) Any license issued pursuant to this chapter shall be valid for a term of one (1) year from the date of issuance. Any license issued pursuant to this chapter, unless revoked, may be renewed by a licensee in accordance with this chapter and such renewal shall be valid for a term of one (1) year. The completed renewal application must be submitted by the licensee no later than forty-five (45) calendar days prior to the expiration of the license along with the applicable renewal fee as set forth in the schedule of fees and charges. The licensing office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed.

(b) If a licensee fails to submit a complete renewal application with the applicable fee at least forty-five (45) calendar days prior to the expiration of the term of the license, the license shall expire at the end of the term of the license and will be deemed non-renewable. Licensees who fail to apply to renew their license, who wish to continue operating a massage establishment or bodywork establishment, must file a new application for license and may not operate a massage establishment or bodywork establishment until a new license has been issued.

Sec. 11-178. Fees.

All fees are nonrefundable, are not prorated, and are set forth in the schedule of fees and charges.

Sec. 11-179. Criminal violations.

(a) It is unlawful:

(1) For any person to knowingly conduct or operate a massage establishment or bodywork establishment on the same business premises as a sexually oriented business, bar, cocktail lounge, photography studio, model studio, art studio, motion picture studio/theater, or telephone answering service.

(2) For any person to fail or refuse to permit a lawful inspection authorized by this chapter immediately upon request.

(3) For any person to conduct massage therapy or bodywork services behind a locked door. It is not a violation of Section 11-179(a)(3) for a licensee to perform massage therapy or bodywork services behind a locked door if the licensee either:

a. Utilizes a locking system approved in writing by the police department which provides the police department with the ability to unlock the doors during regular business hours of the massage establishment or bodywork establishment for the purpose of conducting a lawful inspection authorized by this chapter.

b. Meets both of the following requirements:

(i) Operates a massage establishment or bodywork establishment in which the licensee is the only person performing massage therapy or bodywork at the establishment; and

(ii) The massage establishment or bodywork establishment consists of only one room, not including any shower/bathing or bathroom facilities, as demonstrated in the sketch or diagram required to be submitted to the licensing office pursuant to Section 11-166(22).

(4) For any person to administer massage therapy or bodywork for a gratuity or compensation of any kind when any or all of the private anatomical areas of any person is not covered by opaque material.

(5) For any person, while on the premises of a massage establishment or bodywork 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; or

b. In such a manner that the person touches any or all of the private anatomical areas of the individual receiving the treatment; or

c. While the person providing the treatment is clothed in a manner that fails to cover any or all of his or her own private anatomical areas with an opaque material.

(6) For any person on the premises of a massage establishment or bodywork establishment to intentionally view a completely or partially disrobed client if the viewing is not related to treatment under current practice standards and is intended to appeal to the prurient interest of the person or client.

(7) For any person, while on the premises of a massage establishment or bodywork establishment, to knowingly ask or direct a person to:

a. Touch his or her own private anatomical areas; or

b. Touch the private anatomical areas of any person on the premises; or

c. Expose any or all of his or her own private anatomical areas to any person on the premises with the intention of appealing to the prurient interest.

(8) For any person, while on the premises of a massage establishment or bodywork establishment, to knowingly place any part of the body of a client in direct or indirect contact with private anatomical areas of any other person on the premises.

(9) For any person to knowingly operate or maintain a massage establishment or bodywork establishment at a location that has not been licensed by the licensing office.

(10) For any applicant for a license or renewal to fail to disclose all controlling persons on an application or, in the event the controlling person(s) changes, to fail to update said information with the licensing office.

(11) For any person to knowingly use a massage establishment or bodywork establishment as living or sleeping quarters. Use as “sleeping quarters” means any of the following:

(a) *Sleeping*—10 p.m. to 6:00 a.m. To sleep at any time between the hours of 10 p.m. and 6:00 a.m. in or on the premises;

(b) *Setting-up Bedding*—10 p.m. to 6:00 a.m. To establish or maintain in or on the premises at any time between the hours of 10 p.m. and 6:00 a.m., a temporary or permanent place for sleeping, by setting up any bedding, sleeping bag, blanket, mattress, tent, hammock or other sleeping equipment in such a manner as to be immediately usable for sleeping purposes.

(12) For any person to practice or in any manner to claim to practice massage therapy without first obtaining and maintaining in effect a valid, current, unrevoked and unsuspended massage therapist license as required by the Arizona Revised Statutes and this chapter.

(13) For any person to conduct or operate a massage establishment or bodywork establishment without first obtaining and maintaining in effect a valid, current, unrevoked and unsuspended license as required by this chapter.

(14) For any person to knowingly employ any other person to offer massage therapy who does not hold a valid, current, unrevoked and unsuspended massage therapy license issued by the State of Arizona.

(15) For any person to offer bodywork 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 11-166(22).

(16) For any person to offer bodywork 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 11-166(22).

(17) For any person to provide massage therapy or bodywork services at any time between the hours of 10:00 p.m. to 6:00 a.m. at a massage establishment or bodywork establishment or at any location on behalf of a massage establishment or bodywork establishment.

(18) For any person to photograph a massage establishment or bodywork establishment client while the client is on the premises of the establishment and located within any treatment room, restroom, locker room, or dressing room without the express, written permission of that client. For purposes of Section 11-179(a)(18) the word "photographed" shall mean the use of any electronic or mechanical device to record, reproduce or transmit an optical image, including, but not limited to, video.

(19) A licensee shall not operate under any name or conduct business under any designation not specified in such license and the application submitted for such license.

(b) Habitual offender:

(1) A person who commits a civil violation of this chapter after previously having been found responsible for committing civil violations of this chapter on three (3) separate dates within a thirty-six (36) month period, whether by admission, by payment of the fine, by default, or by judgment after hearing, shall be a habitual offender guilty of a class 1 criminal misdemeanor. The Peoria City Prosecutor is authorized to file class 1 criminal misdemeanor complaints in the Peoria City Court against habitual offenders. For purposes of calculating the thirty-six (36) month period, the dates of the commission of the offenses are the determining factor.

(2) Upon conviction of a violation of this section, the court may impose a sentence authorized by the laws of the State of Arizona for a class 1 misdemeanor, including incarceration not to exceed six (6) months in jail or a fine not to exceed \$2,500.00, exclusive of penalty

assessments prescribed by law, or both. The court shall order a person who has been convicted of a violation of this section to pay a fine of not less than \$500.00 for each count upon which a conviction has been obtained and be placed on probation for up to 36 months.

(c) Whenever in this chapter any act is declared to be a criminal violation, any person convicted of such a violation shall be guilty of a class 1 misdemeanor and shall be punished by a fine not less than \$500 and not to exceed two thousand five hundred dollars (\$2,500.00), by imprisonment not to exceed six (6) months, or by both fine and imprisonment. Each day any such violation continues shall constitute a separate offense. Revocation or suspension of a license shall not be a defense against prosecution. Every action or proceeding under this chapter shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure.

Sec. 11-180. Civil violations.

(a) A violation of any of the following sections of this chapter shall be a civil violation subject to the provisions of this Section 11-180:

- (1) Section 11-167 [manager, landlord and property owner person responsibility];
- (2) Section 11-170(e),(f),(l) and (p);
- (3) Section 11-173 [display of license; identification; retention and inspection of records];
- (4) Section 11-174 [massage therapy log]; or
- (5) Section 11-181(a)(2) [fails to pay required fee].

(b) Any responsible party, whether by admission, default, or after a hearing, found responsible for a civil violation of this chapter, shall pay a civil sanction of:

- (1) \$250.00 for the first violation in an eighteen (18) month period;
- (2) \$500.00 for the second violation in an eighteen (18) month period; and
- (3) \$750.00 for the third violation and each subsequent violation in an eighteen (18) month period.

(4) In applying the eighteen (18) month provision set forth in section 11-180(b), the date of the commission of the offense shall be the determining factor.

(c). Each day in which a civil violation set forth in Section 11-180 continues shall constitute a separate civil offense.

(d). A civil action for violations of this chapter may be commenced by issuance of a citation by any police officer, code enforcement officer, or city employee designated by the city manager. The citation will be substantially in the form established by the city manager or designee. The citation shall be served pursuant to the Arizona Rules of Civil Procedure.

(1) The citation shall advise the responsible party of the violation(s) committed, either by written description of the violations or by designation of the Peoria City Code section violated. The citation shall direct the responsible party to, within ten (10) calendar days of the issuance of the citation, pay the civil sanction or request a hearing before the hearing officer.

(2) The hearing officer may permit amendments to the citation to correct a technical defect made in good faith.

(e) If the responsible party pays the civil sanction, either in person or by mailing payment to the city, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offense(s) described in the citation. If a responsible party served with a civil citation fails to pay the civil sanction, request a hearing, or the request for a hearing is denied in accordance with Section 11-180(f), the violation in the civil citation shall be deemed admitted and the civil sanction may be collected as any other civil judgment, fine or fee due and payable to the city.

(f) Upon receipt of a citation for a civil sanction, a person may request a hearing. The request for hearing must meet the following requirements: (i) the request must be mailed to the budget and finance director and be postmarked no later than ten (10) calendar days after the issuance of the citation; and (ii) the request must set forth the grounds upon which the person is appealing the citation. Failure to meet the aforementioned requirements shall entitle the budget and finance director to deny the request for hearing.

(g) All proceedings before a hearing officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the city is required to prove violations of this chapter by a preponderance of the evidence. No prehearing discovery shall be permitted, unless the hearing officer determines good cause exists otherwise. The hearing officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand.

(h) If the city or responsible party is aggrieved by a decision of a hearing officer, the aggrieved party may file a complaint of special action in Superior Court to review the hearing officer's decision at any time within thirty (30) calendar days after a final decision of the hearing officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the city and the responsible party, shall constitute a waiver of any right to judicial review.

Sec. 11-181. Denial, suspension, revocation, nonrenewal of license.

(a) In addition to any penalties set forth in this chapter, an application for a license may be denied for any of the following reasons:

- (1) Applicant submits an application with falsified information.
- (2) Applicant fails to pay the required fee in accordance with the schedule of fees and charges.
- (3) Applicant or a controlling person for the applicant was determined by the city to be guilty of a felony offense having a reasonable relationship to the functions of a massage establishment, massage therapist, or bodywork establishment during the ten (10) year period immediately preceding the date of application.
- (4) Applicant or a controlling person for the applicant was determined by the city to be guilty of untrue, fraudulent, misleading, or deceptive advertising during the ten (10) year period immediately preceding the date of application.
- (5) Applicant or a controlling person for the applicant was engaged in the business of a massage therapist or person performing bodywork under a false or assumed name or was found to be impersonating another therapist, or person performing bodywork of a like or different name during the ten (10) year period immediately preceding application.
- (6) Applicant or a controlling person for the applicant is currently in violation of this Chapter. Section 11-181(a)(6) shall apply regardless of the location at which the violation occurred.
- (7) Any grounds for denial set forth in Section 11-170.
- (8) Applicant failed to meet a requirement set forth in this chapter or state law for the issuance of a license by the city.

(b) In addition to any penalties set forth in this chapter, a license renewal application may be denied for any of the following reasons:

- (1) For any of the grounds for denial set forth in Section 11-181(a).
- (2) Applicant failed to submit the renewal application within the time frames prescribed by Section 11-177.
- (3) If a licensee, controlling person or employee of a massage establishment or bodywork establishment has had any criminal violations of this chapter involving the massage establishment

or bodywork establishment during the current calendar year, such renewal shall be reviewed for denial.

(c) In addition to any penalties set forth in this chapter, a license shall be suspended if during the term of the license:

(1) Licensee or a controlling person for the licensee is cited, charged, convicted or determined to be in violation by the city of a felony or misdemeanor criminal offense:

a. Involving fraud in conducting the business of a massage establishment or bodywork establishment, or of fraud or deceit in obtaining the license;

b. Involving prostitution, indecent exposure, or pornography;

c. Involving untrue, fraudulent, misleading, or deceptive advertising; or

d. Having a reasonable relationship to the functions of a massage establishment, massage, or bodywork establishment.

(2) The application upon which the license was awarded was found to contain false or misleading information, or the applicant failed to meet any of the requirements for the issuance of a license set forth in schedule of fees and charges.

(3) Licensee or a controlling person for the licensee knows or should have known that prostitution, indecent exposure, or pornographic acts are occurring or have occurred in the operation of the licensed massage establishment or bodywork establishment.

(4) The licensee ceased to use the license for the purposes of offering massage therapy or bodywork. The failure to offer massage therapy or bodywork at a licensed 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 or bodywork.

(5) If the licensee or a controlling person, employee, agent, representative or independent contractor of the licensee is determined by the city to be guilty of an offense having occurred on the premises of any massage establishment or bodywork establishment:

a. Prescribed by chapters 14 (sexual offenses), 32 (prostitution), and 35.1 (sexual exploitation of children) of the Arizona Criminal Code (title 13, Arizona Revised Statutes);

b. Prescribed by Peoria City Code; or

c. Outside this state or city that, if committed in this state or city, would constitute a violation of any offense prescribed by chapters 14, 23, 32, or 35.1 of title 13 of the Arizona Criminal Code or by the Peoria City Code.

(6) Licensee or a controlling person for the licensee is found to be a responsible party for a civil violation set forth in Section 11-180 through a hearing, default, or admittance.

(7) The penalty for a suspension under Section 11-181(c) shall be:

a. For the first suspension of a license during an eighteen (18) month period, the license will be suspended up to fourteen (14) calendar days.

b. For the second suspension of a license during an eighteen (18) month period, the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days.

c. For the third suspension of a license during an eighteen (18) month period, the license shall be revoked in accordance with Section 11-181(d).

(d) In addition to any penalty for a violation set forth in this chapter, a license shall be revoked if the license was suspended in accordance with this chapter on three (3) or more occasions during an eighteen (18) month period, or if any person is convicted of a criminal offense involving human trafficking or organized crime that was committed at or related to the massage establishment or bodywork establishment.

(e) Pursuant to Section 11-163, the tax and license manager or his/her designee has the authority to issue, renew, deny, suspend, or revoke licenses in accordance with this chapter. Any party aggrieved by a decision of the tax and license manager, or his/her designee, may appeal the decision by requesting a hearing within ten (10) days of receipt of notice of the tax and license manager or his/her designee.

(1) The request for hearing must meet the following requirements: (i) the request must be mailed to the budget and finance director and be postmarked no later than ten (10) calendar days after the issuance of the notice of the decision of the tax and license manager or his/her designee; and (ii) the request must set forth the grounds upon which the person is appealing the decision. Failure to meet the aforementioned requirements shall entitle the budget and finance director to deny the request for hearing.

(2) Any appeal hearing shall be subject to the rules set forth in Section 11-180(g). Any request for judicial review of a hearing officer's decision shall be subject to the rules set forth in Section 11-180(h).

(3) The filing of an appeal will suspend the decision of the tax and license manager or his/her designee, or the licensing office until such time as the hearing officer has rendered their decision.

(4) Unless timely appealed, the suspension or revocation is effective ten (10) calendar days after the date on the notice.

Sec. 11-182. Exemptions.

The provisions of this chapter shall not apply to:

- (1) Establishments whose employees are licensed pursuant to the laws of the State of Arizona to practice in the medical field or practice acupuncture, or that provide instruction in the medical field or acupuncture at an accredited school.
- (2) Establishments whose employees are acting as trainers for any bona fide amateur, semiprofessional, or professional athletic team or athlete.
- (3) Establishments whose employees are authorized by the laws of this state as barbers, cosmetologists, or aestheticians provided their activity is limited to the scope of their barber, cosmetology, or aesthetician license.
- (4) Establishments whose employees are providing colon irrigation only.
- (5) Businesses that are operating solely as a school approved by the Arizona State Board of Massage Therapy or cosmetology.
- (6) A massage establishment license is not required for a mobile massage unit, if the mobile massage unit is parked on private property and the massage therapy is not offered or given to the general public. The director shall not issue a license to any person to operate a mobile massage unit on a city street or city property. However, the city may authorize a mobile massage unit in conjunction with a special event.

Sec. 11-183. Licenses; cumulative regulation.

- (a) The licenses required in this chapter are in addition to any business or transaction privilege tax license required by the Peoria City Code or applicable law.
- (b) A state issued massage therapist license does not authorize one to operate a massage establishment or bodywork establishment in the city without first obtaining a license pursuant to this chapter where applicable.
- (c) An applicant for a massage establishment license need not have a massage therapist license. However, a massage establishment shall employ only Arizona state-licensed massage therapists to perform massage therapy.

SECTION 2. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3. This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this ____ day of _____, 2023.

Jason Beck, Mayor

Date Signed

ATTEST:

Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

Emily Jurmu, City Attorney

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