

**BUSINESS REGULATIONS**  
**CHAPTER 8 BUSINESS REGULATIONS<sup>1</sup>**

**ARTICLE 8-1      BUSINESS LICENSE**

- 8-1-1            License Required
- 8-1-2            Definitions in General

**Section 8-1-1   License Required**

- A. It is unlawful for any Person, whether as principal or agent, either personally or for another person, or for any corporation, or as a member of any firm or partnership, to commence practice, transact or carry on any Adult Oriented Business or Regulated Business within the city limits without first having procured a License from the City to do so as set forth in this Chapter and without complying with all regulations of such business as specified or required by Federal, State or local laws and regulations. For purposes of this Chapter, Regulated Businesses shall include (i) Auctioneers, Pawnbrokers, Scrap Dealers and Second Hand Dealers; (ii) Tobacco Retail Establishments; (iii) Massage Establishments; (iv) Tattoo and/or Body Piercing Establishments; and (v) After Hours Establishments.
  
- B. No other business shall be required to obtain a license to conduct business within the city limits.

**Section 8-1-2   Definitions in General**

The definitions in A.R.S. tit. 9 (A.R.S. § 9-101 et seq.) and A.R.S. 36-798 shall be applicable to this Article unless a term is specifically defined in this Article, or unless the context requires otherwise.

**ARTICLE 8-2            ADULT ORIENTED BUSINESSES**

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<sup>1</sup> As of 08/16/2019  
Adopted by Ordinance 18-16 approved on 12/18/2018

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8-2-13	Additional Regulations for Exhibition of Adult Explicit Films, Videos or Live Entertainment in Viewing Rooms
8-2-14	Additional Regulations for Escort Agencies
8-2-15	Additional Regulations for Nude Model Studios
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8-2-17	Prohibition Against Children in an Adult Oriented Business
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### **Section 8-2-1 Purpose and Intent**

It is the purpose of this article to regulate adult-oriented businesses, to promote the public health, safety, and general welfare of the citizens of the city, and to avoid and mitigate the detrimental secondary effects of adult-oriented businesses through content neutral regulations. It is not the purpose of this article to impose a limitation or restriction on the content of any communicative materials, including adult oriented materials, or to restrict or deny access by adults to adult oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult oriented entertainment to their intended market. This article is not intended to interfere with or suppress legitimate expression or any speech activities protected by the First Amendment to the United States Constitution nor is it intended to permit any use or activity which is otherwise prohibited or made punishable by law.

### **Section 8-2-2 Definitions**

In addition to the definitions prescribed in A.R.S. §§44-1601, -1621, and -1641, in this article, unless the context otherwise requires:

- A. "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
- B. "Adult bookstore, adult novelty store or adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
  - 1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
  - 2. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

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A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

- C. "Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:
1. Employees who appear in a state of nudity or semi-nude; or
  2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
  3. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- D. "Adult motel" means a hotel, motel or similar commercial establishment which:
1. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
  2. Offers a sleeping room for rent for a period of time that is less than ten hours; or
  3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.
- E. "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are predominantly characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." "Adult motion picture theater" does not include a theater where all viewing occurs in a common area with seating for fifty (50) or more persons.
- F. "Adult theater" means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

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- G. "Employee" means a person who performs any service on the premises of an adult oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- H. "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- I. "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.
- J. "Establish" or "Establishment" means and includes any of the following:
1. The opening or commencement of any adult oriented business as a new business; or
  2. The conversion of an existing business, whether or not an adult oriented business, to any adult oriented business; or
  3. The additions of any adult oriented business to any other existing adult oriented business; or
  4. The relocation of any adult oriented business.
- K. "Licensee" means a person in whose name a license to operate an adult oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an adult oriented business.
- L. "Nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" shall not include a proprietary school licensed by the State of Arizona or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or in a structure:
1. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
  2. Where in order to participate in a class a student must enroll at least three days in advance of the class.
- M. "Nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the

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female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

- N. "Person" means an individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.
  
- O. "Semi-nude" or in a "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part.
  
- P. "Sexual encounter center" means a non-medical business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
  - 1. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude; or
  - 2. The matching and/or exchanging of persons for "specified sexual activities".
  
- Q. "Adult oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.
  
- R. "Specified anatomical areas" means:
  - 1. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
  - 2. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.
  
- S. "Specified criminal activity" means any of the following offenses:
  - 1. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries for which:
    - a. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

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- b. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
  - c. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period.
2. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.
- T. “Specified sexual activities” means any of the following:
- 1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; or
  - 2. Sex acts, actual or simulated, including intercourse, oral copulation, masturbation or sodomy; or
  - 3. Excretory functions as part of or in connection with any of the activities set forth in paragraphs 1 and 2 above.
- U. “Substantial enlargement” of an adult oriented business means the increase in floor area occupied by the business by more than twenty-five percent, as the floor area exists on the date this article takes effect.
- V. “Transfer of ownership or control” of an adult oriented business means and includes any of the following:
- 1. The sale, lease or sublease of the business; or
  - 2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
  - 3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

### **Section 8-2-3      Classification**

Adult oriented businesses are classified as follows:

- 1. adult arcades
- 2. adult bookstores, adult novelty stores or adult video stores
- 3. adult cabarets
- 4. adult motels
- 5. adult motion picture theaters

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6. adult theaters
7. escort agencies
8. nude model studios
9. sexual encounter centers

### Section 8-2-4 License Required<sup>2</sup>

1. It is unlawful:
  1. For any person to operate an adult oriented business without a valid adult oriented business license issued by the city pursuant to this article.
  2. For any person who operates an adult oriented business to employ a person to work for the adult oriented business who is not licensed as an adult oriented business employee by the city pursuant to this article.
  3. For any person to obtain employment with an adult oriented business without having secured an adult oriented business employee license pursuant to this article.
2. An application for a license must be made on a form provided by the city.
3. All applicants must be qualified according to the provisions of this Article. The application may request and the applicant shall provide such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established in this Article. Applicants shall submit a full set of fingerprints for the purpose of obtaining a state and federal criminal background check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. Fingerprints must be submitted on fingerprint cards provided by the city or designee.
4. If a person who wishes to operate an adult oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate an adult oriented business is other than an individual, each individual who has a ten percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.
5. The completed application for an adult oriented business license shall contain the following information and shall be accompanied by the following documents:
  - a. If the applicant is:
    - i. An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen years of age;
    - ii. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

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<sup>2</sup> Amended by Ordinance 19-07 adopted on 07/16/2019

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- iii. A corporation or limited liability company, the corporation or limited liability company shall state its complete name, the date of its incorporation, evidence that the corporation or limited liability company is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and stockholders or all members if the entity is a limited liability company, and the name of the registered statutory agent and the address of the registered office for service of process.
- b. If the applicant intends to operate the adult oriented business under a name other than that of the applicant; he or she must state the adult oriented business' fictitious name and submit the required registration documents.
- c. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this article, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
- d. Whether the applicant, or a person residing with the applicant, has had a previous license under this article or other similar adult oriented business ordinances from another municipality or county denied, suspended or revoked, including the name and location of the adult oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or stockholder of a corporation or a member of a limited liability company that is licensed under this article whose license has previously been denied, suspended or revoked, including the name and location of the adult oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
- e. Whether the applicant or a person residing with the applicant holds any other licenses under this article or other similar adult oriented business ordinance from another municipality or county and, if so, the names and locations of such other licensed businesses.
- f. The single classification of license for which the applicant is filing.
- g. The location of the proposed adult oriented business, including a legal description of the property, street address and telephone number(s), if any.
- h. The applicant's mailing address and residential address.
- i. A recent photograph of the applicant(s).
- j. The applicant's driver's license number, Social Security number and/or his/her state or federally issued tax identification number.
- k. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

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1. Evidence of current, valid conditional use permit or any other applicable zoning approval for the proposed activity issued by the City; and
  - m. If an applicant wishes to operate an adult oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred-fifty square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in section 8-2-13.
6. Before any applicant may be issued an adult oriented business employee license, the applicant shall submit on a form to be provided by the city the following information:
- a. The applicant's name or any other name (including "stage" names) or aliases used by the individual.
  - b. Age, date, and place of birth.
  - c. Height, weight, hair and eye color.
  - d. Present residence address and telephone number.
  - e. Present business address and telephone number.
  - f. Date, issuing state and number of driver's permit or other identification card information.
  - g. Social Security number.
  - h. Proof that the individual is at least eighteen years of age.
7. Attached to the application form for an adult oriented business employee license as provided above, shall be the following:
- a. A color photograph of the applicant clearly showing the applicant's face and the applicant's fingerprints on a form provided by the Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant. Applicants shall submit a full set of fingerprints for the purpose of obtaining a state and federal criminal background check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. Fingerprints must be submitted on fingerprint cards provided by the city or designee.
  - b. A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, or state has ever had a license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the name, the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.

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8. A statement whether the applicant has been convicted of a specified criminal activity as defined in this article and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

### **Section 8-2-5 Issuance of License**

- A. Upon the filing of said application for an adult oriented business employee license, the city shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty days from the date the completed application is filed. After the investigation, the city shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
  1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form; or
  2. The applicant is under the age of eighteen years; or
  3. The applicant has been convicted of a "specified criminal activity" as defined in this article; or
  4. The adult oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this article; or
  5. The applicant has had an adult oriented business employee license revoked by the city within two years of the date of the current application. If the adult oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in section 8-2-10.
- B. A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any specified criminal activity as defined in this article or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in section 8-2-6.
- C. Within thirty days after receipt of a completed adult oriented business application, the city shall approve or deny the issuance of a license to an applicant. The city shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
  1. An applicant is under eighteen years of age.

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2. An applicant or a person with whom applicant is residing is overdue in payment to the city of taxes, fees, fines or penalties assessed against or imposed upon him/her in relation to any business.
  3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
  4. An applicant or a person with whom the applicant is residing has been denied a license by the city to operate an adult oriented business within the preceding twelve months or whose license to operate an adult oriented business has been revoked within the preceding twelve months.
  5. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this article.
  6. The premises to be used for the adult oriented business have not been approved by the Pinal County Health Department, Maricopa Fire Department or the building official as being in compliance with applicable laws and ordinances.
  7. The license fee required by this article has not been paid.
  8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.
- D. The license, if, granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the adult oriented business and the classification for which the license is issued pursuant to section 8-2-3. All licenses shall be posted in a conspicuous place at or near the entrance to the adult oriented business so that they may be easily read at any time.
- E. The Pinal County Health Department, Maricopa Fire Department and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty days of receipt of the application by the city.
- F. An adult oriented business license shall issue for only one classification as found in section 8-2-3.

### **Section 8-2-6 Fees**

- A. Every application for an adult oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a five hundred dollar (\$500.00) non-refundable application and investigation fee.
- B. In addition to the application and investigation fee required above, every adult oriented business that is granted a license (new or renewal) shall pay to the city an annual non-refundable license fee of five hundred dollars within thirty days of license issuance or renewal.

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- C. Every application for an adult oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual one hundred dollar non-refundable application, investigation and license fee.
- D. All license applications and fees shall be submitted to the Licensing Office designated by the city manager.

### **Section 8-2-7 Inspection**

- A. An applicant or licensee shall permit representatives of the Maricopa Police Department, the Pinal County Health Department, Maricopa Fire Department, City Zoning Department, or other city departments or agencies to inspect the premises of an adult oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- B. A person who operates an adult oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.

### **Section 8-2-8 Expiration of License**

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 8-2-4. Application for renewal shall be made at least thirty days before the expiration date, and when made less than thirty days before the expiration date, the expiration of the license will not be affected.
- B. When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety days have elapsed since the date denial became final.

### **Section 8-2-9 Suspension**

The city shall immediately suspend a license for a period not to exceed thirty (30) days if a licensee or an employee of a licensee has:

- A. Violated or is not in compliance with any section of this article;
- B. Refused to allow an inspection of the adult oriented business premises as authorized by this article.

### **Section 8-2-10 Revocation**

- A. The city shall revoke a license if a cause of suspension in section 8-2-9 occurs and the license has been suspended within the preceding twelve months.

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- B. The city shall revoke a license if:
1. A licensee gave false or misleading information in the material submitted during the application process; or
  2. A licensee has knowingly allowed possession, use or sale of controlled substances on the premises; or
  3. A licensee has knowingly allowed prostitution on the premises; or
  4. A licensee knowingly operated the adult oriented business during a period of time when the licensee's license was suspended; or
  5. Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the licensed premises; or
  6. A licensee is delinquent in payment to the city, county or state for any taxes or fees past due.
- C. When the city revokes a license, the revocation shall continue for one year, and the licensee shall not be issued any adult oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety days have elapsed since the date the revocation became effective.
- D. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

### **Section 8-2-11 Transfer of License**

A licensee shall not transfer his/her license to another, nor shall a licensee operate an adult oriented business under the authority of a license at any place other than the address designated in the application.

### **Section 8-2-13 Additional Regulations for Adult Motels**

- A. Evidence that a sleeping room in a hotel, motel or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.
- B. A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have an adult oriented business license, he rents or sub-rents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

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- C. For purposes of subsection B of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

### **Section 8-2-14 Additional Regulations for Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms**

- A. A person who operates or causes to be operated an adult oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
1. An application for an adult oriented business license shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The city may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
  2. The application shall be sworn to be true and correct by the applicant.
  3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the city.
  4. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
  5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

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6. It shall be the duty of the licensee to ensure that the view area specified in paragraph 5 of this subsection remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to paragraph 1 of this subsection.
  7. No viewing room may be occupied by more than one person at any time.
  8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot-candles as measured at the floor level.
  9. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
  10. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
  11. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
  12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
  13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
  14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight inches of the floor.
- B. A person having a duty under subsection A of this section commits a misdemeanor if he knowingly fails to fulfill that duty.

### **Section 8-2-15 Additional Regulations for Escort Agencies**

- A. An escort agency shall not employ any person under the age of eighteen years.
- B. A person commits a misdemeanor if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen years.

### **Section 8-2-16 Additional Regulations for Nude Model Studios**

- A. A nude model studio shall not employ any person under the age of eighteen years.

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- B. A person under the age of eighteen years commits a misdemeanor if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen years was in a restroom not open to public view or visible to any other person.
- C. A person commits a misdemeanor if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

### **Section 8-2-17 Additional Regulations Concerning Public Nudity**

- A. It shall be a misdemeanor for a person who knowingly and intentionally, in an adult oriented business, appears in a state of nudity or depicts specified sexual activities.
- B. It shall be a misdemeanor for a person who knowingly or intentionally in an adult oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least five (5) feet from any patron or customer and on a stage at least two feet from the floor.
- C. It shall be a misdemeanor for an employee, while semi-nude in an adult oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in an adult oriented business.
- D. It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

### **Section 8-2-18 Prohibition Against Children in an Adult Oriented Business**

A person commits a misdemeanor if the person knowingly allows a person under the age of eighteen years on the premises of an adult oriented business.

### **Section 8-2-19 Hours of Operation**

No adult oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock A.M. and eight o'clock A.M. on weekdays and Saturdays, and one o'clock A.M. and noon P.M. on Sundays.

### **Section 8-2-20 Exemptions**

It is a defense to prosecution under section 8-2-16 that a person appearing in a state of nudity did so in a modeling class operated:

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1. By a proprietary school licensed by the State of Arizona; a college, junior college or university supported entirely or partly by taxation;
2. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or
3. In a structure:
  - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

### **Section 8-2-21      Penalty; Injunction**

- A. Violation of any requirement or prohibition stated in this article is a class one (1) misdemeanor. With respect to a violation that is continuing in nature, each day that the violation occurs is a separate offense.
- B. In addition to other penalties, an adult oriented business which operated without a valid license shall constitute a public nuisance, which, in addition to any other enforcement mechanisms in this Code, may be abated by a suit for injunctive relief.

### **ARTICLE 8-3.    REGULATED BUSINESSES**

8-3-1	Definitions
8-3-2	Applicability; Provisions Cumulative
8-3-3	License Application; Fee; Timeline
8-3-4	License Required
8-3-5	License Application; Contents
8-3-6	Massage Establishments; Special Requirements
8-3-7	Auctioneers, Pawnbrokers, Secondhand Dealers and Scrap Dealers; Special Requirements
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8-3-11	Term of License
8-3-12	Inspection of Premises, Property and Records
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8-3-17	Display of License
8-3-18	Transferability; Automatic Termination of License
8-3-19	Penalty

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### Sec. 8-3-1. Definitions

In addition to the definitions prescribed in A.R.S. §§44-1601, -1621, and -1641, the terms of this Article shall have the following meanings:

- (a) *After-hours Activity* – Any establishment or location where social dancing occurs and a patron pays a fee or charge or any area from which a Person holding any state liquor license authorizing them to sell, dispense or serve spirituous liquor which are open to patrons during the hours of 2:30 a.m. to 6:00 a.m.
- (b) *After-hours Establishment* – Any place where an After-hours Activity occurs or is provided. The term includes the building or other place where the After-hours Activity takes place, together with all surrounding premises used for parking or for any other purpose relating to the After-hours Activity.
- (c) *Applicant* – Any Person filing an Application with the City for a Regulated Business License.
- (d) *Application* – An application for a Regulated Business License made on a form provided by the City.
- (e) *Auctioneer* – Any Person who either operates an establishment in which is carried on the business of auctioning articles or who as principal or agent offers any articles for sale by public outcry, where such items offered for auction are sold immediately to the highest bidder.
- (f) *Client* – An individual who enters into an agreement for Massage Therapy for a fee, income or compensation of any kind within the City.
- (g) *Compliance Checks* – The system the City may use to investigate and ensure that those authorized to sell Tobacco, Tobacco Products, and Tobacco Related Devices are following and complying with the requirements of this Article. Compliance Checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to Tobacco, Tobacco Products, and Tobacco Related Devices.
- (h) *Control* – The power to direct or cause the direction of the management and policies of an applicant, Licensee or Controlling Person, whether through the ownership of voting securities or a partnership interest, or by agreement or otherwise. Control is presumed to exist if a Person has the direct or indirect ownership of or power to vote ten percent (10%) or more of the outstanding voting securities of the applicant, Licensee or Controlling Person or to Control in any manner the election of one or more of the directors of the applicant, Licensee or Controlling Person. For the purposes of determining the percentage of voting securities owned, controlled or held by a Person, the voting securities of any other Person directly or indirectly controlling, controlled by or under common control with the other Person, or by an officer, partner, employee or agent of the Person or by a spouse, parent or child of the Person shall be included. Control is also presumed to exist if a creditor of the applicant, Licensee or Controlling Person holds a beneficial interest in fifty percent (50%) or more of the liabilities of the Licensee or Controlling Person.
- (i) *Controlling Person* – A Person directly or indirectly possessing Control of an applicant or Licensee.
- (j) *Designated Agent* – The individual designated by the Applicant who will be the responsible party to receive City notices pursuant to this Article.
- (k) *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.

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(l) *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.

(m) *Licensee* – Any Person to whom the city has issued a license under this Article or any Person acting on behalf of such Person.

(n) *Licensing Office* – A department for the City of Maricopa as designated by the city manager.

(o) *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 Article.

(p) *Massage Establishment* – Any place of business or establishment wherein any of the subjects or methods of treatment listed in paragraphs (o) or (q) 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 (o) or (q).

(q) *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. For purposes of this Article, *touch* shall include physical contact that occurs through clothing or by means of any object

(r) *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.

(s) *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.

(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.

(3) Any combination of range of motion, directed, assisted or passive movements of the joints.

(4) Hydrotherapy, including, but not limited to tub, shower or cabinet baths, and the application of water, hot and cold packs or wraps.

(5) Any other therapeutic application of wraps, oils, alcohol rubs, skin brushing, salt glows and similar applications of products to the skin.

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.)

(t) *Minor* – An individual who has not yet reached eighteen (18) years of age.

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(u) *Owner* – The owner of record, as shown by the records in the office of the county assessor, of the premises where a Regulated Business Establishment is located. “Business owner” means any legal owner of a Regulated Business Establishment.

(v) *Pawnbroker* – Any Person engaged in conducting, managing or carrying on the business of pawnbroking, or the business of loaning money for himself or for any other Person, receiving as security for the repayment thereof, pawns or pledges of personal property, or the business of purchasing personal property and reselling or agreeing to resell such articles to vendors, their personal representatives or their assignees, at prices agreed upon at or before the time of such purchase, whether such business be the principal or sole business so carried on, managed or conducted, or merely incidental to, in connection with or a branch or a department of some other business or businesses.

(w) *Person* – Any individual, partnership, limited partnership, firm, corporation, association, or any other group acting as a unit.

(x) *Piercing* – Penetrating, perforating, boring or creating a hole in the skin or another human body part. This Article does not apply to ear piercing or procedures prescribed by a health care provider licensed pursuant to A.R.S. tit. 32 (A.R.S. § 32-101 et seq.)

(y) *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.

(z) *Regulated Business* – Includes any of the following businesses:

Auctioneers, Pawnbrokers, Scrap Dealers and Second Hand Dealers

Tobacco Retail Establishments

Massage Establishments

Tattoo and/or Body Piercing Establishments

After Hours Establishments

(aa) *Regulated Business License or License*- Authorization issued by the City to any Person to operate a Regulated Business.

(bb) *Sale* – Any lawful transfer of goods for money, trade, barter or other consideration.

(cc) *Sampling Tobacco* – The lighting, inhalation, or combination thereof of Tobacco, Tobacco Related Devices, or Tobacco-related Products for the purpose of testing a Tobacco Product prior to the Sale of such product.

(dd) *Scrap Dealer* – Any Person engaged in the business of purchasing or obtaining material of any kind, such as any vehicle parts or accessories, machinery, iron, copper, brass, lead, zinc, tin, steel, aluminum and other metals, metal alloys, metallic cables, wire, batteries, rope, rubber and other like materials which are purchased or obtained from Persons other than the original manufacturer or authorized distributor selling the same for money, credit or exchange. The material purchased or obtained is put to a use inconsistent with the original purpose of the property; to be scrapped, dismantled, melted, pressed or otherwise disfigured, and to be resold to others in the form so altered, or used by the purchaser in its altered form. The provisions of this Article shall not apply to any Persons engaged solely in recycling metal cans, paper, cardboard or glass.

(ee) *Secondhand* – Has been owned previously by someone other than the manufacturer or dealer whose business it is to sell such items to the public.

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(ff) *Secondhand Dealer* – Any Person, other than a Person who deals exclusively in Secondhand books, magazines, audio or video recordings regardless of media, handbills or posters, engaged in conducting, managing or carrying on the business of buying, selling, trading, exchanging or otherwise dealing in Secondhand goods, wares, merchandise or articles, whether such business be the principal or sole business so carried on, managed or conducted or be merely incidental to, in connection with or a branch or a department of some other business. This definition does not include trade-ins, dealers or Auctioneers in articles of property, the transfer of title to which is required by state law to evidence by written instrument and recorded properly. This definition does not include garage sales, rummage sales or similar nonrecurring sales between individuals.

(gg) *Self-Service Merchandising* – Open displays of Tobacco, Tobacco Products or Tobacco Related Devices in any manner where any individual shall have access to the Tobacco, Tobacco Products, or Tobacco Related Devices, without the assistance or intervention of the Licensee or the Licensee's employee. The assistance or intervention shall entail the actual physical exchange of the Tobacco, Tobacco Product, or Tobacco Related Device between the customer and the Licensee or employee. The phrase shall not include Vending Machines. Self-Service sales are interpreted as being any sale where there is not an actual physical exchange of the Tobacco between the clerk and the customer.

(hh) *Smoke* – Carrying or placing of a lighted cigarette, lighted cigar, lighted pipe or any other lighted smoking equipment in one's mouth for the purpose of inhaling and exhaling smoke or blowing smoke rings; placing of a lighted cigarette, lighted cigar, lighted pipe or any other lighted smoking equipment in an ashtray or other receptacle and allowing smoke to diffuse in the air; or carrying or placing of a lighted cigarette, lighted cigar, lighted pipe or any other lighted smoking equipment in one's hands or any appendage or devices and allowing smoke to diffuse in the air.

(ii) *Smoking Lounge* – A business establishment that permits the smoking of Tobacco or other combustible substances on site, including but not limited to establishments commonly known as hookah bars/cafes, tobacco clubs, or smoking parlors.

(jj) *Tattoo* – Any indelible design, letter, scroll, figure, symbol or other mark that is placed on or under the skin with ink or colors by the aid of needles or other instruments and that cannot be removed without a surgical procedure; or any design, letter, scroll, or other mark done by scarring on or under the skin.

(kk) *Tattoo and/or Body Piercing Establishment or Establishment*– Any place of business or establishment wherein branding, scarifying, Tattooing or Piercing is performed.

(ll) *Tattoo and/or Body Piercing Artist* – A Person who has training in Tattooing, branding, scarifying or Piercing and who practices Tattooing, branding, scarifying or Piercing as described in this Article for a fee of any kind.

(mm) *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 of this Article on a temporary basis.

(nn) *Tobacco or Tobacco Products* – Any substance or item containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

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(oo) *Tobacco-related Devices* – Any Tobacco Product as well as a pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of Tobacco or Tobacco Products.

(pp) *Tobacco Retail Establishment* – A retail establishment that has obtained an appropriate License to possess Tobacco, Tobacco Products or Tobacco-related Devices for the purpose of selling them for consumption and not for resale, in which greater than fifty percent (50%) of the business' gross revenue must be from the Sale of Tobacco, Tobacco Products or smoking related accessories. This definition does not include retail establishments which derive the majority of their gross revenue from the sale of cigars and cigar accessories.

### **Sec. 8-3-2. Applicability; Provisions Cumulative**

(a) The provisions of this Article shall apply to all Regulated Business establishments and Persons as defined herein.

(b) The provisions of this Article shall be in addition to any other regulations, privilege or license taxes or permit requirements required by the City, the state or other applicable agency and cumulative to any other applicable regulations, procedures or penalties.

### **Sec. 8-3-3. License Application; Fee; Timeline**

(a) Any Person desiring to obtain a Regulated Business License must apply to the Licensing Office. Each application must be accompanied by all required application fees.

(b) The annual fee for any License, including a renewal license, under this article shall be Fifty Dollars (\$50.00), with each such license to expire one (1) year from the date the License is issued. Any Person who discontinues operating a Regulated Business during the period covered by the current License shall not be entitled to any refund of any license fee. A separate charge for a License shall be paid for each location or separate place of business in which any Person operates a Regulated Business.

(c) In order for an Application or any renewal thereof to be administratively complete, all fees must have been paid.

(d) An Application will be granted or denied within the schedule of administrative and substantive review timeframes, as established by the Licensing Office.

(e) Fees are not prorated, transferable or refundable unless otherwise provided by law.

(f) An application for a Regulated Business license will not be processed or renewed if the applicant is delinquent in any payment to the City for charges including, but not limited to, taxes, fees, renewal fees or fees incurred as a result of a Code violation.

### **Sec. 8-3-4. License Required**

(a) It is unlawful for any Person to conduct business or operate as a Regulated Business in the City without first obtaining and maintaining in effect a current, unrevoked and unsuspended license as required by this Article.

## **BUSINESS REGULATIONS**

(b) It is unlawful for any Person licensed as provided in this Article to operate under any name or conduct business under any designation not specified in the License.

(c) It is unlawful for any Person licensed as provided in this Article to conduct business at any location not specified on such License.

(d) The License required by this Article is in addition to any other licenses or permits required by any governmental authority necessary to lawfully conduct business.

(e) Only fixed location businesses shall be eligible to be licensed under this Article. No License shall be issued to any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

### **Sec. 8-3-5. License Application; Contents**

(a) Each application for a Regulated Business license shall include a description of the proposed business activity. Such description shall include, but not be limited to, the following information. Paragraphs (1) through (9) below are required to be completed about the applicant, the business owner, the Licensee if not the applicant or the business owner, the agent responsible for managing the premises on a day to day basis (hereinafter "Managing Agent") and any Controlling Person as defined herein:

- (1) Full legal name and any name by which the Person is or has been known;
- (2) Current home address and telephone number and addresses over the past ten (10) years;
- (3) Driver's license number or other government-issued, federally recognized identification;
- (4) Birth date, height, weight, hair and eye color;
- (5) Business occupation and employment history for ten (10) years;
- (6) License history, including issuance, revocation, suspension or termination of any current or past related licenses;
- (7) The applicants, agents, and all employees shall submit to a fingerprinting process as directed by the Licensing Office for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. Fingerprints must be submitted on fingerprint cards provided by the Licensing Office or designee.
- (8) Listing of any prior felony or misdemeanor convictions except Minor Traffic Violations. For purposes of this Section, a Minor Traffic Violation shall be a conviction or finding of responsibility not to include the following, which shall be considered serious traffic violations: excessive speeding involving a single offense for a speed of fifteen miles per hour or more above the posted speed limit; reckless driving as provided by A.R.S. §§28-693; aggressive driving as provided by Section A.R.S. §§28-695; racing as defined in A.R.S. §§28-708; improper or erratic traffic lane changes as provided by A.R.S. §§28-729; following the vehicle ahead too closely as provided by A.R.S. §§28-730; a violation that is connected with a fatal traffic accident; driving a motor vehicle if the person has not been issued a valid driver license; driving a motor vehicle without a driver license in the person's possession; driving a motor vehicle without having a valid endorsement for the type of motor vehicle or motor vehicle combination being operated.
- (9) Documentation of age over eighteen (18) years;

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(10) Designation of the Managing Agent who will be managing or operating the business at the indicated location and proof of the Managing Agent's authorization to act on behalf of the prospective Licensee;

(11) Name, address and telephone number of any other local agent authorized to conduct daily business and proof of authority to act on behalf of the prospective Licensee;

(12) Name, address and telephone number of statutory agent in Arizona if a corporation or an out-of-state applicant, Licensee or owner;

(13) Except for corporations listed on the major stock exchanges, the names and addresses of all Persons financially interested in the business. If a Person financially interested in the business of the prospective Licensee is a corporation, the names and addresses of all Persons financially interested in that corporation shall be provided;

(14) The names and addresses of any Controlling Persons. If the Controlling Person is a corporation, the names and addresses of all Persons having Control of the controlling corporation shall be provided;

(15) Evidence of current, valid conditional use permit or any other applicable zoning approval for the proposed activity issued by the City;

(16) The Articles of Incorporation, Articles of Organization, or Certificate of Limited Partnership, together with any amendments thereto, for the Applicant, as applicable;

(17) For a Massage Establishment, the following information shall also be required on the Application:

(i) A list of services to be offered by the Massage Establishment;

(ii) A clearly legible sketch or diagram showing the configuration of the overall business premises. 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. Such sketch shall include:

A. The location of all interior doors, walls, curtains and room dividers. 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.

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.

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.

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.

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- (iii) Acknowledgment that it is unlawful to cause obstruction of the passage of light through any windows of a Massage Establishment premise by means including, but not limited to, affixing plywood, paper, or taping other opaque materials over the windows.
- (iv) Acknowledgement that it is unlawful for any Massage Establishment Licensee, Controlling Person, licensed Massage Manager, or Temporary Manager to allow any Person under the influence of intoxicating liquor or illicit or unprescribed drugs to be present in a Massage Establishment. For the purpose of this Article, a citation may be issued to one or all of the parties present in the Massage Establishment if it is obvious to the citing officer that any Person within the Massage Establishment shows signs of impairment.

(18) For an After Hours Establishment, the following information shall also be required on the Application:

- (i) Legal description and location of the premises and lot where the proposed activity will take place, submitted on a map drawn to scale, at least eight and one-half by eleven inches, showing the dimensions of the property and the name and width of all internal and abutting streets, roads or alleys, any existing buildings, fences and easements, with distances to property lines;
- (ii) Floor plan containing an accurate drawing to scale depicting the interior plan and layout of the premises; and

(19) Such other information as may be requested by the Licensing Office to determine the truth of the information required to be set forth above.

(b) Any change in ownership of the business or in the information required to be provided in paragraphs (1), (10), (11), (12), (13), (17) or (18) above shall be reported to the Licensing Office within ten (10) calendar days after the change. Such changes shall be subject to investigation and approval by the City and, if disapproved, the disapproval shall be grounds for automatic termination of the License as provided in this Code. The requirement for reporting changes as required herein is effective at all times during the City's consideration of the application and at all times when a license issued hereunder is in effect. All other information set forth in subsection (a) above must be updated at the time of the renewal of the license.

(c) The Police Department shall conduct an investigation of the application and background of the applicant and proposed Licensee. Based on such investigation, the Police Department shall recommend to the Licensing Office the approval or denial of the license. In addition, the Development Services Department and Fire/Medical Department, and any other affected department, may inspect any premises proposed as the site of the establishment and may make separate recommendations to the Licensing Office concerning compliance with the provisions of this Article and any other applicable rules or regulations.

### **Sec. 8-3-6. Massage Establishments; Special Requirements**

(a) A Massage Establishment shall comply with the following requirements at all times:

- (1) A readable sign shall be permanently affixed at the main entrance to the business identifying the business as a Massage Establishment.

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- (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.
- (3) 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 8-3-1 (q) or (s).
- (4) Hot and cold running water, tempered by means of a mixing valve faucet, shall be provided at all times.
- (5) Closed cabinets shall be provided, and used, for the storage of clean linens.
- (6) Notwithstanding any other requirement of this Article, 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.
- (7) Any pool or spa shall be issued a permit and inspected as required by the Maricopa City Code, as applicable.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) The Massage Establishment must have at least one (1) exterior window facing the front of the business. Window must measure at least 4 x 4.
- (12) 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.
- (13) The name of any Person provided to the Licensing Office 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.
- (14) 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

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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 this Article. The establishment Licensee must request the temporary authorization on the form provided by the Licensing Office.

- (i) 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 Licensing Office grants up to one (1) additional approval for good cause at the sole discretion of the Finance Director or designee.
- (ii) The establishment Licensee shall ensure the new Manager candidate(s) applies for a 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.

(15) 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 ten (10) years of any of any felony or misdemeanor offence having a reasonable relationship to the operation of a Massage Establishment, any offense proscribed by the City of Maricopa City Code, or any offense proscribed by Chapters 14, 32 or 35.1 of Title 13, Arizona Revised Statutes.

(16) 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.

(17) 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.

(18) 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 10:00 P.M. and 7:00 A.M.

(19) 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 Article.

(20) It is unlawful for any Massage Establishment to be open for business without a licensed Massage Manager or Temporary Manager on duty. It is unlawful for any Massage Establishment Employee to be present inside a Massage Establishment without a licensed Massage Manager or Temporary Manager present and on duty at the Massage Establishment. If a Massage Establishment Employee finds himself or herself inside a Massage Establishment without a licensed Massage Manager or Temporary Manager present and on duty, he or she must leave the premises immediately until a licensed Massage Manager or Temporary Manager is present and on duty.

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(21) Notwithstanding any other provision of this Article, the Licensing Office may delay the granting or denial of a Regulated Business 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 at the location for which the Application was submitted and there also exists a Police Department report documenting a violation of this Article at that establishment or a state prosecution of that existing establishment relating to compliance with any of the provisions of this Article. For purposes of this Section, an active Massage Establishment 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 City Council 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.

(22) The Applicant for any Massage Establishment for a location at which a License for a Massage Establishment 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.

(23) A License for a Massage Establishment 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 License for a Massage Establishment has a Massage Establishment in operation.

(24) Any Application for a Massage Establishment that is not in full compliance with this Article 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 (60) 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.

(25) 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 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.

(26) 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 the required fee. Notwithstanding any other provision of this Article, 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.

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(27) It is unlawful:

- (i) For any person to Knowingly conduct or operate a Massage Establishment on the same business premises, as established under Section 8-3-5, whereon is also conducted or operated a adult oriented business as defined in Chapter 8 of the Maricopa City Code, or a bar, cocktail lounge, photography studio, model studio, art studio, motion picture studio/theater or telephone answering service.
- (ii) Any Person to fail or refuse to permit a lawful inspection immediately upon request.
- (iii) Any Massage Establishment to permit a Person to conduct Massage Therapy behind a locked door.
- (iv) Any Person to administer Massage Therapy for a fee to a Client whose genital organs and anus are not covered by opaque material.
- (v) 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.
  - B. In such a manner that the person touches the Private Anatomical Areas of the individual receiving the treatment.
  - 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.
- (vi) 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.
- (vii) 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.
  - B. Touch the anus, genitals or breasts of any person on the premises.
  - 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.
- (viii) 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.
- (ix) 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 Article.
- (x) For any Person to Knowingly operate or maintain a Massage Establishment at a location that has not been licensed by the Licensing Office.

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- (xi) For any Person, except an agent for a publicly held corporation, to fail to disclose all Controlling Persons on an Application.
  - (xii) For any Person, to Knowingly use a Massage Establishment as living or sleeping quarters.
  - (xiii) It shall be unlawful for any Massage Establishment to have any entrance or exit way providing a direct passageway to any other type of business, residence or living quarters.
  - (xiv) 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.
- (b) Exemptions. The provisions of this Article 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;
  - (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 or cosmetologists, provided their activity is limited to the scope of their barber or cosmetology license;
  - (4) Establishments whose Employees are providing colon irrigation only.
  - (5) Businesses that are operating solely as a school that is Arizona State Board of Massage Therapy-approved.
- (c) Limited Exemption. The following provisions of this Article shall not apply to Massage Establishments or Massage Therapists that are performing Massage or Touching Techniques or Massage Therapy solely in their Clients' place of residence:
- (1) Section 8-3-5(a)(17)(ii) – (iv)
  - (2) Section 8-3-6 (a)(1) – (11)
  - (3) Section 8-3-17(b)(A)

This Section does not exempt the above Massage Establishments or Massage Therapists from maintaining all other applicable licenses or permits required by the State or City to lawfully operate including, but not limited to, obtaining a valid Home Occupation Permit issued pursuant to Section 410.12 of Chapter 16 of the City Code for their administrative office.

### **Sec. 8-3-7. Auctioneers, Pawnbrokers, Secondhand Dealers and Scrap Dealers; Special Requirements**

(a) Fruits of a Crime. Pawnbrokers shall file reports with and in a manner approved by the Police Department consistent with all of the requirements contained in A.R.S. §44-1625 as amended or as may be amended upon forms provided or approved by the Police Department. The required forms are paid for in advance at a location designated by the Police Department.

- (1) No article shall be sold or exchanged by any Pawnbroker until it shall have been in the custody thereof for twenty (20) calendar days after making out and delivering to the Police

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Department the report required under Subsection (a) above. Any article held in custody pursuant to the paragraph shall not be altered or transformed in any way but shall be held in the same condition in which it was delivered to the reporting party. This Subsection shall not apply to redemption of pawned or pledged articles.

(b) All Auctioneers, Pawnbrokers, Secondhand Dealers, and Scrap Dealers shall submit to a fingerprinting process as directed by the Licensing Office in accordance with this Article.

(c) Scrap Dealers shall file reports with the Police Department consistent with all of the requirements contained in A.R.S. §44-1644 as amended or as may be amended.

(d) Secondhand Dealers shall file reports with and in a manner approved by the Police Department consistent with all of the requirements contained in A.R.S. §44-1602(C) as amended or as may be amended and the requirements of this Article upon forms provided or approved by the Police Department. The required forms are paid for in advance at a location designated by the Police Department.

(1) Any Person subject to the provisions of this Article who is engaged in the business of Secondhand Dealer shall, at the time of the transaction, include in the report all goods or articles received on deposit, consignment, trade, exchange or purchase which bear a serial number, owner applied number (O.A.N.) or have a fair market value in excess of one hundred dollars (\$100.00).

(2) A Secondhand Dealer shall retain any property obtained in a reportable transaction at its place of business or other storage location approved by the Police Department for a period of ten (10) calendar days after making out and delivering to the Police Department the report required under this Subsection. Any article held in custody pursuant hereto shall not be altered or transformed in any way but shall be held in the same condition in which it was delivered to the reporting party. If a Secondhand Dealer comes into possession of abandoned property, the dealer shall turn over such property to the Police Department.

(3) Notwithstanding the foregoing, the provisions of this Subsection shall not apply to purchases by a Secondhand Dealer from a business with a fixed business location of either business inventory or business equipment, provided that the licensee has acquired by the time of the transaction documentation of:

- (i) the name and address of the business;
- (ii) the state and local privilege (sales) tax license number of the business, if applicable;
- (iii) a copy of the invoice or other document showing the business' bona fide purchase of or right to possess the article sold, or a representative of the business with authority to on its behalf had completed and signed the report required by this section in all its particulars, without regard to the amount of the transaction.

(4) The provisions of this Subsection shall not apply to Secondhand Dealers' purchases of household items from a place of residence provided that:

- (i) the purchase is made by the licensee by check or other negotiable instrument made payable to the seller, or the purchase is made in cash and the licensee has obtained a receipt for that cash payment from the seller bearing the seller's name and address verified to be accurate by the licensee;
- (ii) the seller has produced for the licensee's inspection documentary evidence which establishes that the seller is either the lawful occupant of the premises or has the

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legal right to sell the items offered for sale. The licensee shall record from the documentary evidence produced a description of the document, including the name or nature of the document, and, to the extent available, its date, the individual's name and address thereon, and any account number;

(iii) notwithstanding the fair market value of one hundred dollars (\$100.00) or more rule contained in Subsection 8-3-7(d)(1), the licensee records the serial numbers and descriptions of all items bearing serial numbers.

(5) The provisions of this Subsection shall not apply to consignments to Secondhand Dealers, other than a firearm, provided that no payment is made by the licensee to the consignor for a period of ten (10) calendar days after the date of consignment.

(6) The provisions of this Subsection shall not apply to articles of used clothing or furniture received by a Secondhand Dealer in trade, exchange, purchase or on consignment, excluding electronic appliances and equipment.

(7) The provisions of this Subsection shall not apply to goods or articles received by a Secondhand Dealer in trade, exchange or by purchase from a business engaged in the lawful liquidation of its business.

(8) The provisions of this Subsection shall not apply to goods or articles received by a Secondhand Dealer in trade, exchange, purchase or on consignment from an auction house or Pawnbroker possessing a valid license issued pursuant to this Article.

(9) The business premises of any Secondhand Dealer, along with their transaction records and stock of goods and articles shall be open to reasonable inspection by any peace officer of this state when the business premises are lawfully occupied and during regular business hours. All documentation required to substantiate the above exclusions shall be retained on the business premises for a period of twenty-four (24) months. Each Secondhand Dealer shall maintain a current copy of this Article on the premises and shall make it available upon request to any employee or customer and to local law enforcement.

(e) Auctioneers shall file true, complete, and legible reports with the Police Department of all goods and articles received except clothing, books, records, and audio tapes. The reports shall be made upon forms provided or approved by the Police Department and shall be delivered or postmarked within twenty-four (24) hours after receipt of the property. An Auctioneer shall describe the property using either of the following methods:

(1) By attaching a legible copy of the Auctioneer's consignment agreement, purchase receipt, purchase invoice, or other similar document containing a property description; or

(2) For groups of items that are received as part of one (1) business transaction that are not readily distinguishable or identifiable as individual items, by furnishing on one (1) report a general description of the group of items.

(f) It shall not be considered a violation of this Section if the violation is the result of a bona fide error, provided that the Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer maintains procedures reasonably adapted to avoid the occurrence of such bona fide error. For purposes of this Section, "bona fide error" shall mean clerical, calculation, computer malfunction, programming, printing, and other similar errors.

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(g) Upon notification by any peace officer or representative of the Police Department that goods or articles received on deposit or consignment, in pawn, pledge, trade, or exchange, or by purchase are the fruits of a crime, no Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer shall dispose of such property.

(1) A peace officer or representative of the Police Department may place a hold on property in person, on the telephone, or by any other reasonable means if the Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer is notified in writing within five (5) working days after the hold is placed. This written notice shall include all of the following information:

- (i) The date of the hold;
- (ii) A description of the property, including serial number if applicable;
- (iii) The representative's name and, if applicable, badge number;
- (iv) The telephone number of the representative;
- (v) The Police Department report number.

(2) If a peace officer or representative of the Police Department declares a "police hold" on the property, the Person shall attach a tag supplied by the Police Department to the property. The tag shall include the representative's name and serial number, telephone number, and the date of the hold. The tag shall remain on the property until the Police Department releases the hold or until the hold expires pursuant to paragraph 3 of this Subsection.

(3) A hold shall expire ninety (90) days after the date of the hold. A hold may be extended by the Police Department in ninety- (90-) day increments by written notification to the Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer if the notification is received prior to the expiration of the hold.

(4) Interest upon such goods and articles pawned or pledged shall cease to accrue on the date of official notification.

(5) Upon receiving a receipt from any peace officer or representative of the Police Department, the Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer shall turn over such items to the peace officer or representative of the Police Department.

(h) The reporting requirements of this Section on goods and articles received on deposit or consignment, trade or exchange, or by purchase shall not apply to organizations qualified under Section 501(C) of the Internal Revenue Code.

### **Sec. 8-3-8. Tobacco Establishments; Special Requirements**

(a) Special Operating Requirements for Smoking Lounges. It is unlawful for any Person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises within the City, the business of a Smoking Lounge except in compliance with all of the following requirements:

- (1) The business shall comply with the provisions regulating smoking in the workplace set forth in Section 36-601.01 of the Arizona Revised Statutes commonly known as the Smoke-free Arizona Act.

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- (2) No individual under eighteen (18) years of age shall be permitted within the business.
- (3) All business-related activities shall be conducted wholly within a building, with the exception of outdoor seating, which shall be operated in accordance with the City of Maricopa Zoning Code. No window coverings shall prevent visibility of the interior of the tenant space from outside the premises during operating hours. Any proposed window tint shall be approved in advance by the development services department.
- (4) The interior of the business enterprise shall be maintained with adequate illumination to make the conduct of patrons within the premises readily discernible to individuals of normal visual acuity.

(b) Prohibited Sales. It shall be a violation of this Article for any Person, or employee or responsible party, to sell or offer to sell any Tobacco, Tobacco Product, or Tobacco Related Device:

- (1) To any individual under eighteen (18) years of age.
- (2) By means of any type of Vending Machine. This prohibition shall not apply to Vending Machines that meet the requirements set forth in A.R.S. §36-798.02, as may be amended from time to time. For purposes of this Section, a Vending Machine means any mechanical, electric or electronic, or other type of self-service device that dispenses Tobacco, Tobacco Products or Tobacco Related Devices upon the insertion of money, tokens or any other form of payment.
- (3) By means of Self-Service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the Tobacco, Tobacco Product, or Tobacco Related Device and whereby there is not a physical exchange of the Tobacco, Tobacco Product, or Tobacco Related Device between the Licensee, or the Licensee's employee, and the customer. This division shall not apply to retail stores which cannot be entered at any time by individual under eighteen (18) years of age.
- (4) By means of Loosies, a single or individually packed cigarette. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose Tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered Individually Packaged.
- (5) Containing opium, morphine, jimpson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in Tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the Sale of lawfully manufactured cigarettes or other Tobacco Products.
- (6) By any other means, to any other individual, or in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

(c) Self-Service Sales. It shall be unlawful for a Licensee under this Article to allow the Sale of Tobacco, Tobacco Products, or Tobacco Related Devices by any means whereby the customer may

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have access to such items without having to request the item from the Licensee or the Licensee's employee and whereby there is not a physical exchange of the Tobacco, Tobacco Product, or the Tobacco Related Device between the Licensee or his clerk and the customer. All Tobacco, Tobacco Products, and Tobacco Related Devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling Tobacco, Tobacco Products, or Tobacco Related Devices at the time this Article is adopted shall comply with this Section within ninety (90) days following the effective date of this Article. This Section shall not apply to retail stores which cannot be entered at any time by individual under eighteen (18) years of age.

(d) **Compliance Checks and Inspections.** All licensed premises shall be open to inspection by the Police Department or other authorized City officials during regular business hours. From time to time, the City may conduct Compliance Checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase Tobacco, Tobacco Products, or Tobacco Related Devices. Minors used for the purpose of Compliance Checks shall be trained and supervised by designated City personnel. Minors used for Compliance Checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of Tobacco, Tobacco Products, or Tobacco Related Devices when such items are obtained or attempted to be obtained as part of the Compliance Check. No minor used in Compliance Checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a Compliance Check shall answer all questions about the minor's age asked by the Licensee or employee and shall produce any identification upon request, if any exists.

(e) **Other Illegal Acts.** Unless otherwise provided, the following acts shall be a violation of this Article:

- (1) *Illegal sales.* It shall be a violation of this Article for any Person to sell or otherwise provide any Tobacco, Tobacco Product, or Tobacco Related Device to any Minor within City limits.
- (2) *Illegal possession.* It shall be a violation of this Article for any Minor to possess any Tobacco, Tobacco Product, or Tobacco Related Device within City limits. This subsection (2) shall not apply to Minors lawfully involved in a Compliance Check by the City.
- (3) *Illegal use.* It shall be a violation of this Article for any Minor to smoke, chew, sniff or otherwise use any Tobacco, Tobacco Product, or Tobacco Related Device within City limits.
- (4) *Illegal procurement.* It shall be a violation of this Article for any Minor to purchase or attempt to purchase or otherwise obtain any Tobacco, Tobacco Product or Tobacco Related Device, and it shall be a violation of this Article for any Person to purchase or otherwise obtain such items on behalf of a Minor. It shall further be a violation for any Person to sell or otherwise provide any Tobacco, Tobacco Product, or Tobacco Related Device to any Minor, and it shall further be a violation to coerce or attempt to coerce a Minor to illegally purchase or otherwise obtain or use any Tobacco, Tobacco Product, or Tobacco Related Device. This subsection (4) shall not apply to Minors lawfully involved in a Compliance Check by the City.

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(5) *Use of false identification.* It shall be a violation of this Article for any Minor to attempt to disguise his/her true age with a false form of identification, whether the identification is that of another Person or an identification on which the age of the Person has been modified or tampered with to represent an age older than the actual age of the Minor.

(f) **Exceptions and Defenses.**

- (1) Nothing in this article shall prevent the providing of Tobacco, Tobacco Products, or Tobacco Related Devices to a Minor as part of a lawfully-recognized religious, spiritual, or cultural ceremony.
- (2) It shall be an affirmative defense to the violation of this Article for a Person to have reasonably relied on proof of age as described by state law.

### **Sec. 8-3-9. Tattoo and/or Body Piercing Establishments; Special Requirements**

(a) It is unlawful for any Person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises within the City, the business of a Tattoo and/or Body Piercing Establishment except in compliance with all of the following requirements:

- (1) A readable sign, conforming to the City's sign ordinances, shall be posted at the main entrance identifying the establishment.
- (2) Lighting and ventilation shall be provided in each room or enclosure where services are performed on patrons, in accordance with the City's Building Code.
- (3) Public restrooms shall be located in such a way so that traffic to the restrooms does not occur in any area in which instruments are sterilized or on any area in which Tattoo and/or body Piercing operations are conducted.
- (4) Establishment must have written procedures on the proper handling and sterilization of equipment and demonstrate that all personnel are trained in the procedure. All personnel must be updated annually.
- (5) Establishment must post and provide to customers upon request, written instructions on Tattoo and/or Piercing care.
- (6) Establishment must have a posted procedure, followed by all employees, wherein they are required to obtain two pieces of identification to verify the age of the customer.
- (7) Establishment must provide training in blood-borne pathogens and cross contamination to all personnel on an annual basis.

(b) With respect to any Person subject to the provisions of this Article, it shall be unlawful:

- (1) To intentionally brand, scarify, Tattoo or pierce the body of a Person who is under 16 years of age.
- (2) To intentionally brand, scarify, Tattoo or pierce the body of a Person who is 16 or 17 years of age without the physical presence of that person's parent or legal guardian.
- (3) To perform branding, scarifying, Tattooing or Piercing of the body of a Person who is under the influence of alcohol or drugs.

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(c) Wherever in this Article an act is prohibited or declared unlawful, and wherever in this Article the doing of any act is required or the failure to do any act is declared unlawful, the violation of any such provisions of this Article shall result in an offense punishable according to Section 8-3-19, except Subsections (a)(1) and (a)(2) of this Section, which are classified as class six felonies.

(d) Exemptions.

(1) The provisions of this Article shall not apply to:

- (i) Persons authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy or acupuncture;
- (ii) Registered nurses, licensed practical nurses or technicians, when acting under the supervision of a licensed physician or osteopath;
- (iii) Ear piercing; or
- (iv) Procedures prescribed by a health care provider licensed pursuant to A.R.S. § 32-101 et seq.

(2) Any exemption granted in this Article is effective only insofar as and to the extent that the bona fide practice of the business or profession of the Person exempted overlaps into the field comprehended by this Article, and exemptions granted in this Article are solely for those activities which are performed in the course of the bona fide practice of the business or profession of the Person exempted.

### **Sec. 8-3-10. After Hours Establishments; Special Requirements**

(a) An After-hours Establishment shall comply with this Article and all applicable City and state laws and ordinances, including but not limited to fire and building and zoning codes. In addition, the following requirements apply:

- (1) The hours during which the After-hours Establishment may be open for conduct of After-hours Activity shall be as specified in the After-hours Establishment License issued by the City;
- (2) Persons under eighteen (18) years of age are prohibited in an After-hours Establishment;
- (3) Written proof of identification shall be required for admission to an After-hours Establishment to ensure compliance with paragraph (2) of this section. The following written instruments are the only acceptable types of identification:
  - A. An unexpired driver's license issued by any state, provided such license includes a picture of the licensee;
  - B. An identification license issued pursuant to state law;
  - C. An armed forces identification card; or
  - D. A valid unexpired passport issued by a government which contains a photograph of the person and the date of birth.
- (4) No Person shall be admitted to, nor shall any Person be allowed to remain on, the licensed premises who is or appears to be under the influence of spirituous liquor or drugs or who is disturbing the peace;

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(5) No spirituous liquor may be furnished, sold, served or consumed at an After-hours Establishment between 2:30 a.m. and 6:00 a.m. If the after-hours licensee holds a liquor license from the state, spirituous liquor service and consumption must terminate upon the hours as required by state law;

(6) Admittance and any admittance lines for entry to the establishment shall be closed at 3:00 a.m. or at such other time prescribed in the License issued by the City;

(7) Any parking used by patrons of the Licensee, and any parking area of the Licensee or within three hundred (300) feet of the licensed premises shall be supervised by the Licensee to ensure that the parking areas are used by persons entering and exiting from their vehicles and are not used as a gathering place; and

(8) Applicant must have a current security plan pursuant to Section 8-3-10 of this Code.

(9) A plan which demonstrates how the Licensee will ensure compliance with these regulations shall accompany the Application and is subject to approval by the Police Department. Any change in the plan of operation once approved must be submitted to the City for approval prior to the change becoming effective as provided in Section 8-3-5. A copy of the plan of operation shall be available at the After-hours Establishment for inspection by the City during business hours and at other reasonable times. The plan shall include such information as required by the Licensing Office, including identification of employees, agents or private contractors who are responsible for security and ensuring compliance with the terms of this Article

(b) Security Plan Required. The Applicant shall furnish to the Licensing Office, for review and approval by the Police Department, a security plan containing the following information:

(1) Plan of operation, program plan and hours;

(2) Site/building information;

(3) Safety conditions;

(4) Patron parking, ingress and egress, vehicular and pedestrian traffic control;

(5) Staffing and operations;

(6) Conditions of plan;

(7) On-site contact person/manager;

(8) Any and all responsible parties for business operations;

(9) Floor plan and evacuation routes; and

(10) Any other reasonable information the police department deems necessary for review and approval of the security plan.

(c) Unlawful Activities. It is unlawful for any Person or Licensee at an After-hours Establishment to:

(a) Operate without any required City or state permit or in violation of any applicable City or state law or ordinance;

(b) Admit persons under eighteen (18) years of age;

(c) Serve spirituous liquor or permit the consumption thereof at an After-hours Establishment when prohibited in this Article or state law;

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- (d) Employ any person who is under eighteen (18) years of age to work during the hours between 2:30 a.m. and 6:00 a.m.;
- (e) Allow an intoxicated or disorderly person to come into or remain on the licensed premises, except that an intoxicated person may remain on the premises for no longer than thirty (30) minutes to arrange for transportation;
- (f) Solicit or encourage, or allow an employee to solicit or encourage, to buy a patron anything of value, directly or indirectly, or for a patron to solicit or encourage to buy an employee anything of value, directly or indirectly;
- (g) Knowingly permit unlawful possession, use, or sale of narcotics, dangerous drugs or marijuana;
- (h) Knowingly permit prostitution or solicitation of prostitution;
- (i) Knowingly permit unlawful gambling on the premises;
- (j) Knowingly permit trafficking in stolen property;
- (k) Fail or refuse to make the premises or records, or the plan required in Section 8-3-10(a) available for inspection as provided in this Article; or
- (l) Employ or permit a person to be employed on a salary, contractor commission basis for the purpose of dancing with patrons, except that this shall not apply to bona fide instructors of dancing regularly employed for the exclusive purpose of giving bona fide instructions for dancing.

### **Sec. 8-3-11. Term of License**

Any Regulated Business license issued pursuant to the provisions of this Article, shall be valid only during the calendar year in which it is issued. Any license may be renewed by filing a renewal application for approval and paying the renewal fee before the first day of the year in which the applicant wishes to be licensed.

### **Sec. 8-3-12. Inspection of Premises, Property and Records**

To ensure compliance with this Article and other applicable laws, the business premises of any Person required to be licensed under this Article, including any property on the premises related to the Regulated Business establishment, must be open to inspection by representatives of the City upon request at any time during the Licensee's regular business hours, or reasonable hours as agreed upon by the Licensee and the City.

### **Sec. 8-3-13. Grounds for Denial**

The following include, but are not limited to, grounds for denial of an application for a Regulated Business license:

- (a) The applicant, or proposed conduct of the business, fails to meet the requirements of this Article or any other applicable rule, regulation or law;
- (b) The Applicant does not have an acceptable plan for compliance with this Article on requirements for operation;

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- (c) The applicant is a corporation which is not qualified to transact business in the state of Arizona;
- (d) Fraud, misrepresentations or material misstatements are made in the application or in the course of carrying on the business;
- (e) Harm to the public health, safety or welfare of the community, or clear or present danger of serious damage or danger to the public, would result from granting the license; or
- (f) A business owner, Managing Agent, Applicant, Tattoo and/or Body Piercing Artist, other managing employee or a Controlling Person in the business to be licensed has been convicted of:
  - (1) A felony; or
  - (2) A misdemeanor which relates to the activity to be licensed, or has, within two (2) years preceding the date of the issuance of a license, violated any of the provisions of this Article or the Maricopa City Code while conducting a related business activity.
- (g) A License for a Massage Establishment may be denied if:
  - (1) the Applicant or a Controlling Person has been convicted within the last ten (10) 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 Article;
  - (2) the Applicant or Controlling Person has been convicted within the last ten (10) years of any offense proscribed by Chapters 14, 32, and 35.1 of the Arizona Criminal Code (Title 13, Arizona Revised Statutes), or by the City of Maricopa City Code, 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 the City of Maricopa City Code; or
  - (3) 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.

### **Sec. 8-3-14. Grounds for Revocation, Suspension, or Non-Renewal of License**

- (a) In addition to the automatic termination of a license as provided in this Article, the license may be revoked, suspended or denied renewal for any one or more of the following grounds:
  - (1) The Licensee has violated the requirements of this Article or any other applicable provision of this Code or law;
  - (2) The Licensee has been convicted of fraud in conducting the business or found guilty of deceit in obtaining a license to conduct the business;
  - (3) The Licensee has been convicted in a court of competent jurisdiction of a felony or of any misdemeanor which relates to the licensed activity;
  - (4) 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;

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- (5) The Licensee is grossly ignorant or willfully negligent in the business of the licensed establishment;
- (6) The Licensee Knowingly files an Application or other document with material information which is false or misleading or Knowingly gives testimony in an investigation or other proceeding which is false or misleading;
- (7) The Licensee is delinquent for more than thirty (30) days in the payment of any applicable taxes or fees payable to the City following formal notice of delinquency;
- (8) That, in the case of a Massage Establishment, the Licensee or any Employee or managing agent thereof fails or refuses to make the premises or records available for inspections and examination as provided in this Article;
- (9) The Licensee fails to comply with the terms of the plan of operation as approved by the City;
- (10) There occurs on the premises repeated acts of violence or disorderly conduct;
- (11) The Licensee or any employee or Managing Agent thereof fails or refuses to make the premises or records available for inspections and examination as provided in this Article;
- (12) That, in the case of a Massage Establishment, there is any change in services offered or use or configuration of the premises without appropriate approvals from the City;
- (13) The Licensee knowingly files an application or other document with material information which is false or misleading or knowingly gives testimony in an investigation or other proceeding which is false or misleading;
- (14) The Licensee is delinquent for more than thirty (30) days in the payment of any applicable taxes or fees payable to the City following formal notice of delinquency;
- (15) Any completion of non-permitted improvements to the premises of the establishment occurs without appropriate approvals from the City;
- (16) That, in the case of a Massage Establishment, there is any change in services offered or use or configuration of the premises without appropriate approvals from the City;
- (17) 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;
- (18) 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;
- (19) 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.
- (20) The Licensee fails to take reasonable steps to protect the safety of a customer of the Licensee entering, leaving or remaining on the licensed premises when the Licensee knew or should have known of the danger to such person, or the Licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise to prevent or break up an act of violence or an altercation occurring on the licensed premises or immediately adjacent to the premises when the Licensee knew or reasonably should have known of such acts of violation or altercations;

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(21) The Licensee, his managing agent, a Controlling Person or other managing employee knowingly associates with a Person who has engaged in racketeering, as defined in A.R.S. § 13-2301, or has been convicted of a felony and the association is of such a nature to create a reasonable risk that the Licensee will fail to conform to the requirements of this Article or any criminal statute of this state; or

(22) Any completion of non-permitted improvements to the premises of the After-hours Establishment occurs without appropriate approvals from the City.

(b) Unless a specific provision of this Article establishes the penalty for a violation thereof, the License of a Massage Establishment or License of a Manager of Massage Establishment shall be denied, revoked, suspended, or denied renewal upon any one (1) or more of the following grounds:

(1) Any Licensee or Applicant has been convicted in a court of competent jurisdiction within the last ten (10) years of a felony or misdemeanor involving prostitution, indecent exposure, pornography, or if the application is false in any regard.

(2) 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.

(3) 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 word "photographed" shall mean the use of any electronic or mechanical device to record, reproduce or transmit an optical image.

(4) The establishment license shall be denied if any of the following persons would be disqualified under this Article:

- (i) The president or other executive officers of a corporate Applicant;
- (ii) Each general partner of an Applicant that is a limited partnership or any partner of a non-limited partnership Applicant;
- (iii) The managing member(s) or officer(s) of the Applicant;
- (iv) Any Controlling Person of the Applicant;
- (v) Sole proprietor.

(c) Upon discovery of any of the grounds set forth in subsection (a) and (b) above, the Licensee shall be given notification of the violation.

(1) Upon notification of a violation, the business licensee shall have thirty (30) days in which to remedy the violation before the license is suspended. Business activity shall be allowed to continue during this period, unless the violation threatens public health, protection, safety, or morals, in which case the business activity shall cease immediately upon notification of violation.

(2) If after thirty (30) days the violation has not been remedied or the remedial action not brought to the attention of the license inspector or city, the license inspector shall give written notice to the licensee or the person in control of the business within the city by personal service or registered mail that the license is suspended pending a hearing before the city manager, or his or

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her appointee, for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be within fifteen (15) days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation.

(3) The licensee may take the necessary actions during the suspension period to remedy the violation(s), if allowable, and apply to the city to have the license fully restored. The suspension notice shall be void, and the suspended license shall be promptly reinstated as soon as the licensee in violation receives notice in writing from the city indicating the violation has been cured, removed or rectified.

(4) During the period of the license suspension, or revocation but awaiting appeal, no business activity shall be conducted at, on, or in such premises or by any such person, principal, agent, corporation, group, or member of any firm or partnership

### **Sec. 8-3-15. Appeals**

- A. Any person aggrieved by the denial of an application for license or by the restrictions placed upon the license or by the suspension or revocation of such license, and who is not satisfied with the decision of the city manager or his or her designee, shall have the right to an appeal before the city council. An appeal shall be taken by filing with the city, within fifteen (15) days after the decision of the city manager or his or her designee, a written statement setting forth fully the grounds for the appeal. If an appeal is not requested within such time limit, no appeal shall be granted, and the decision of the city manager or his or her designee will become final and binding. Such written statement of appeal must be delivered in person to the city.
- B. The city council shall hear the matter of the appeal at the next regularly scheduled meeting that provides sufficient notice to the licensee, and notice of such hearing shall be mailed to the appellant at least seven (7) days prior to the meeting. Notice shall be deemed delivered upon mailing, whether received or not.
- C. The decision and order of the city council on appeal shall be final.

### **Sec. 8-3-16. Application after Denial or Termination**

No Person may apply for a Regulated Business license within one (1) year from:

- (a) The denial of any such license to the applicant; or
- (b) The suspension, revocation, termination or non-renewal of such license unless the cause of the denial, suspension, termination, revocation or nonrenewal has been, to the satisfaction of the Licensing Office, removed in such time.

### **Sec. 8-3-17. Display of License**

- (a) A licensee shall display such license in a conspicuous place in the licensed establishment.
- (b) For a Massage Establishment:

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- 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 8-3-10.
- 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:
  - 1. A copy of the state-issued Massage Therapist license.
  - 2. A copy of the government issued identification document with photo provided pursuant to Section 8-3-17(b)(A).
- C. 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 8-3-5.
- 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.
- E. 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.

### **Sec. 8-3-18. Transferability; Automatic Termination of License**

- (a) Licenses issued hereunder are not transferable.
- (b) The following shall result in automatic termination of a Regulated Business license:
  - (1) Any change in location of a licensed establishment;
  - (2) Any changes to services offered or use or configuration of the premises without prior approval from the Licensing Office;
  - (3) Upon the sale or transfer of more than fifty percent (50%) of the stock or ownership of the licensed establishment; or
  - (4) Upon the revocation or termination of any use permit or other zoning approval issued by the City relating to the licensed establishment.
- (c) A new application may be made by the Person whose license is terminated as provided in this Section, or by another Person desiring to own or operate a Regulated Business establishment.

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### **Sec. 8-3-19. Penalty**

(a) A violation of this Article is an offense, punishable as provided in Article 1-8 of this Code. Each day on which a violation continues shall be a separate offense.

(b) In addition to the punishments provided in this Section, a violation of this Article is grounds for revocation of the license as provided in Section 8-3-14 of this Article.