

Material being added is underscored.
Material being deleted is [bracketed and struck-out]

BILL NO. _____

SUMMARY - A business license ordinance to amend Title 7, Chapter 7.08, Sections 7.08.020, 7.08.030, 7.08.040, 7.08.045, 7.08.050, 7.08.060, 7.08.070, 7.08.080, 7.08.120, 7.08.140 and 7.08.170, relative to conducting Reflexology activities under a Massage Business establishment license, and providing for other matters properly relating thereto.

ORDINANCE NO. _____
(Of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 7, CHAPTER 7.08, SECTIONS, 7.08.020, 7.08.30, 7.08.40, 7.08.45, 7.08.50, 7.08.60, 7.08.70, 7.08.80, 7.08.120, 7.08.140 AND 7.08.170; RELATIVE TO CONDUCTING REFLEXOLOGY ACTIVITIES UNDER A MASSAGE BUSINESS ESTABLISHMENT LICENSE; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREY ORDAIN AS FOLLOWS:

SECTION 1. Title 7, Chapter 7.08, Sections 7.08.020, 7.08.30, 7.08.040, 7.08.045, 7.08.050, 7.08.060, 7.08.070, 7.08.080, 7.08.120, 7.08.140 and 7.08.170; and by adding a new section 7.08.115, relative to conducting Reflexology activities under a general business license, is hereby amended as follows:

Chapter 7.08 – Massage Industry

7.08.010 - Legislative findings.

The board of county commissioners of Clark County, based upon evidence presented to it at public hearing, finds that: (1) Massage establishments have engaged in advertising which is misleading in that it reasonably suggests that services other than massage are available; (2) Undesirable persons or criminal persons have invested in massage

establishments or outcall massage operations and have made profits without disclosure of their participation in accordance with the requirements of operation of massage establishments pursuant to Clark County Code section 7.08.050; (3) Immoral acts have been committed or permitted by persons acting under the guise of operating or working in or for massage businesses; (4) Untrained, uncertified or violent persons performing massage could seriously injure the person upon whom the massage is performed, and therefore concludes that it is necessary to the public health, welfare, peace, safety and morals, that massage establishments and massage businesses be regulated.

7.08.020 - Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this chapter:

- (1) "Ancillary employee" means all employees of a licensed massage establishment and/or massage business including independent contractors (except massage therapists), who work in the establishment or business, and in no way may touch the patron.
- (2) "Bathhouse" means any place, including a private club or organization, wherein any person engages in, conducts or carries on, or permits to be engaged in, conducted or carried on, the business of giving or furnishing baths of any kind or type whatever, including, but not limited to, Russian, Turkish, Swedish, hot air, vapor, electric cabinet, steam, mineral, sweat, salt, Japanese, sauna, fomentation or electric baths. A bathhouse is subject to the provisions of Clark County Code Chapter 7.09 and is not deemed to be a massage or reflexology establishment [or massage business] for purposes of this chapter, unless operated in conjunction with a massage establishment or massage business, in

which case the establishment or business shall be subject to the provisions of both Clark County Code Chapters 7.08 and 7.09 and be appropriately licensed.

(3) "Chair massage" means a massage administered by a massage therapist to a fully clothed client utilizing a massage chair. A patron or guest at a resort hotel receiving a chair massage in the pool area of the resort hotel shall be considered fully clothed when wearing appropriate public pool attire.

(4) "Department" means the Clark County Department of Business License.

(5) "Director" means the director of the Clark County Department of Business License.

(6) "Independent massage therapist" means any person that is self-employed, administers massage as defined in Nevada Revised Statutes 640C, and/or reflexology as defined in this chapter, and possesses a valid Nevada Board of Massage Therapist License.

(7) "Manager in charge" means the individual designated by the massage establishment or massage business as being responsible for employee supervision and compliance with this chapter.

(8) "Massage/massage therapy" means the physical or mechanical manipulation of soft tissue of the body, including but not limited to acupressure and those manipulations so defined in NRS 640C. Massage therapy and or reflexology may only be performed by a massage therapist or independent massage therapist in accordance with this chapter.

Mechanical manipulation for purposes of this chapter does not include a machine that requires only a token or payment for use and is self-operating.

(9) "Massage and/or reflexology business" means any place wherein massage is an accessory use as defined in Clark County Code Chapter 30. The following locations are

deemed suitable for a massage business: beauty salon, health club, country club, golf course club house, spa, resort hotel or resort club. Any business that contracts or otherwise affiliates with an independent massage therapist for the purpose of performing massage shall be responsible for the conduct and business operations of the independent massage therapist. Any misconduct by the independent massage therapist, massage therapist, or ancillary employee shall reflect on the massage business's continued ability for licensure. A massage business may only post its license at the location for which the license was issued and wherein the practice of massage is actually being performed on a regular and continuing basis.

(10) "Massage establishment" means any fixed place of business wherein the practice of massage and/or reflexology provides the primary source of income or compensation for the business. Any massage establishment that contracts or otherwise affiliates with an independent massage therapist for the purpose of performing massage is responsible for the conduct of the independent massage therapist. Any misconduct by the independent massage therapist, massage therapist, or ancillary employee shall reflect on the massage establishment's continued ability for licensure. A massage establishment may only post its license at the location for which the license was issued and wherein the practice of massage is actually being performed on a regular and continuing basis.

(11) "Massage therapist" means any person that works for a massage business or establishment, administers massage as defined by NRS 640C, and possesses a valid Nevada State Board of Massage Therapist license.

(12) "Nevada State Board of Massage Therapists" means the state regulatory agency governing massage therapists pursuant to NRS 640C.

(13) "Outcall massage" means any massage which is provided by an independent massage therapist that possesses a valid Nevada State Board of Massage Therapy license.

(14) "Person" includes any association, corporation, firm, partnership, trust or other form of business association as well as a natural person.

(15) "Premises" means the portion of the building in which the licensee is located and over which he/she has control as owner or lessee. For the purposes of a resort hotel, "premises" shall be defined as set forth in Clark County Code Chapter 8.04

(16) "Principal" means any individual; or, if a corporation, each stockholder owning or controlling ten percent or more of the stock of the corporation and each officer and director; or, if a partnership, each partner; or, if an unincorporated association, each and every member/manager/owner thereof, or any other business entity.

(17) "Reflexology" means a massage performed by an independent massage therapist that uses the techniques of applying specific pressure to the reflex points in a client's hands, feet, and/or ears using alternating pressure. Reflexology shall only be licensed under the massage establishment or business.

(18) [(17)] "Resort hotel" shall be defined as set forth in Clark County Code Chapter 8.04

(19) [(18)] "Specified anatomical areas" means the human genitals, pubic region, anus, or perineum of any person, or the vulva or breast of a female.

(20) [(19)] "State License" is the license issued by the Nevada State Board of Massage Therapists pursuant to NRS Chapter 640C.

7.08.030 - Exemptions.

The provisions of this chapter shall not apply to:

(a) Providers of health care who are duly licensed to practice their respective professions in the state of Nevada, who in the course of their practice, provide massage as incidental therapy to their patients and such therapy is provided on the business premises of the state licensed provider of health care exclusive of any area occupied by an independent massage therapist;

(b) Registered nurses and licensed practical nurses, when properly trained in massage and acting under the direct supervision of, and on the business premises of a state licensed provider of health care and who only provide massage to the provider of health care's patients;

(c) Barbers and cosmetologists who are duly licensed under the laws of the state of Nevada and who perform only those massages included within the practice of barbering or the practice of cosmetology as defined by state law;

(d) Resort hotels shall not be required to have patrons sign a register [~~pursuant to Clark County Code Section 7.08.080~~], nor publicly post a list of services and the cost of such services as required pursuant to Clark County Code Section 7.08.045, but resort hotels must comply with all other provisions of the Clark County Code, including but not limited to this chapter; and

(e) Student clinic programs offering massage for a nominal fee to the public on the premises of a recognized school of massage pursuant to regulations of the state of Nevada Department of Education.

7.08.040 - License required.

(a) No person shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises, the operation of a massage establishment,

massage business, or provide services as an independent massage therapist or without first obtaining and thereafter maintaining a valid Nevada State Board of Massage Therapist License pursuant to NRS 640C and a Clark County Business License pursuant to Title 6 of this code.

(b) Any independent massage therapist who is licensed in any jurisdiction outside of unincorporated Clark County and who desires to perform massage in unincorporated Clark County must also obtain a business license for massage from the department in accordance with Title 6 and must also possess a valid Nevada State Board of Massage Therapist License pursuant to NRS 640C.

(c) Any owner of a massage establishment or massage business who wishes to personally engage in the administering of massage or reflexology shall obtain a license from the Nevada State Board of Massage Therapy in addition to the massage establishment or massage business license pursuant to this chapter.

(d) A drugless practitioner who is licensed to conduct reflexology must come into compliance with Chapter 7.08 Massage Industry within eighteen months (18) after the effective date of this code.

7.08.045 - Operating requirements.

All massage establishments and massage businesses shall operate only within the hours of 8:00 a.m. to 9:00 p.m. unless exempted from this provision under subsection (m) of this section. Additional operating requirements are as follows:

(a) A person designated as the manager in charge shall be on the premises at all times of operation;

- (b) A list of services available and the cost of such services shall be available and visible in an open public place within the premises, and shall be described in readily understandable terms. No owner, manager, responsible managing employee, or licensee shall permit, offer or perform, any service other than those printed, available, and visible;
- (c) All employees shall wear opaque, nontransparent outer garments. Said garments shall not expose specified anatomical areas or the chest area;
- (d) All massage therapists/independent massage therapists and reflexologist must have their valid Nevada State Board of Massage Therapists Licenses displayed pursuant to NRS 640C.450 and either must carry their business licenses with them or have their licenses readily available while working at a massage establishment, massage business, or while working outcall massage;
- (e) No person shall enter, or be in any part of a massage establishment or massage business while in possession of, or consuming any alcoholic beverage (unless the liquor licensing provisions of Clark County Code Chapter 8.20 have been met) or drugs (except pursuant to a prescription for such drugs). The owner, manager in charge, or licensee shall not permit any such person to enter or remain upon such premises;
- (f) No massage as defined in this chapter may be carried on within any cubicle, room, booth or any area within a massage establishment or massage business which is not accessible to the director or person designated by the director or the LVMPD during all hours of operation;
- (g) A massage shall not be given unless the patron's specified anatomical areas are fully covered with an opaque, non-transparent outer garment.

(h) No massage establishment and/or massage business shall be open for business without at least one massage therapist on the premises at all times of operation who is in possession of a valid Nevada State Board of Massage Therapists License.

(i) No massage establishment, massage business, or space utilized for massage shall be equipped with tinted or two-way mirrors in any room or office;

(j) Electrical powered lighting shall be provided for all massage establishments, massage businesses, and space utilized for massage. Lighting luminaries and fixtures may be of incandescent, fluorescent, or high density discharge types. All areas, to include office areas, waiting areas, and treatment rooms, shall be provided with lighting such that the minimum lighting luminance [~~illumiance~~] level is not less than five foot-candles [~~footcandles~~]. Minimum or greater illumination levels shall be maintained at all times the building, including the treatment rooms, is occupied. Measurements of illumination levels shall be taken at or near work surface levels of treatment tables, treatment chairs, and desk tops and at floor levels throughout the building. Illumination levels shall be determined by field measurement using certified, calibrated photometric equipment.

(k) [Reserved.]

(l) Each massage establishment and massage business shall be in full compliance with any and all applicable rules and regulations of the Southern Nevada Health District, Fire Department, Building Department, and all other appropriate regulatory agencies.

(m) The provision limiting hours of operations from 8:00 a.m., to 9:00 p.m. shall not apply to following, except that the director or the board may impose hours of operation based upon evidence of changed circumstances:

- (i) Massage establishments, massage businesses, chair massage businesses, and massage offered on the premises of state licensed providers of health care by a licensed independent massage therapist licensed prior to April 1, 2008,
- (ii) Massage establishments licensed prior to April 1, 2008 and approved for a change in and/or transfer of ownership subsequent to the enactment of this ordinance, in accordance with Title 6, Chapter 6.04, Section 6.04.070 of this code,
- (iii) Massage offered by a licensee within the premises of a resort hotel as defined in Clark County Code Chapter 8.04.010.

7.08.050 - License application requirements.

Any person desiring to operate a massage establishment or massage business shall file a written application with the director on a form to be furnished by the department in accordance with Section 6.08.070 of this Code ~~[and shall submit to a background investigation for suitability by the LVMPD]~~. The applicant shall tender with the application the correct business license and investigation fee as provided in Section 7.08.060 and Section 6.08.115 of this code. Upon completion of all required investigations, the application shall be acted upon as set forth in Chapter 6.08.110 (g) of this code. ~~[The applicant shall furnish the following information to the director along~~

~~with the application: (a) The name of the person to whom the license is to be issued, together with the location; (b) The date when the applicant proposes to commence business; (c) An affidavit stating whether there has been any change in ownership in the business of the applicant or applicants during the preceding calendar year, and if there has been any change, that such change was made in compliance with NRS 104, Article 6; and (d) If the applicant or applicants will be engaged in business under a fictitious name, an affidavit that the applicant or applicants have complied with the provisions of NRS 602; and (e) The application may include additional questions as deemed appropriate by the director.]~~

7.08.060 – Fees.

Each massage establishment, massage business and independent massage therapist must pay a semiannual gross license fee in advance in accordance with of this code.

7.08.070 - Advertising.

No massage establishment or massage business granted a license under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture, or statement which is known or, through the exercise of reasonable care, should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any massage services. All advertisements placed, published, distributed, disseminated or broadcast by a licensee shall contain the business license number.

7.08.080 - Master list of employees and independent massage therapists and reflexologist.

The licensee, or person designated by the licensee, of a massage establishment or massage business shall maintain a register of all persons employed, contracted, or affiliated with at any time as massage therapists and/or Independent Massage Therapists and their Nevada State Board of Massage Therapist License numbers and expiration dates and Clark County Independent Massage Therapist business license numbers and expiration dates.

7.08.090 - Display of license required.

The massage business or massage establishment contracting or otherwise entering into agreement with one or more massage therapists, licensed or otherwise, for the purpose of providing massage on the premises to the general public shall display the appropriate massage establishment license or massage business license in an open and conspicuous place on the premises of the massage establishment or massage business in that area utilized for massage.

7.08.110 - Nevada State Board of Massage Therapist License.

It shall be unlawful for any massage establishment or massage business to employ or contract with any massage therapist, including an independent massage therapist, unless such person holds a license with the Nevada State Board of Massage Therapists.

7.08.120 - Prohibited acts.

It is unlawful:

- (a) For an ancillary employee to touch a patron; except in the case of an emergency.

(b) For an aesthetician to administer massage for any purpose other than that specified in NRS Chapter 644 which states an aesthetician may only provide massage for purposes of caring for the skin. An aesthetician is not authorized to provide massage for the purpose of relaxation, therapy or stress relief. It is also unlawful for such a person to provide services at any location other than that for which he/she is licensed by the State of Nevada to practice; and

(c) For any individual, other than an aesthetician licensed by the State Board of Cosmetology or a massage therapist licensed by the county and the Nevada State Board of Massage Therapists to apply salt glow, mineral rubs, herbs or any other form of treatment which requires touching a patron.

7.08.130 - Outcall massage.

Outcall massage is only permitted by an independent massage therapist on a client at the client's temporary or permanent residence or at the client's place of business provided proper licensure for an independent massage therapist has been obtained.

7.08.140 - Transfers prohibited—Change of location.

No massage establishment, massage business, or independent massage therapist business license is transferable for any reason and is conferred only to the licensee named therein.

No massage business, or massage establishment licensee shall move the business to a place other than that licensed or conduct business at any location other than that for which it is licensed in accordance with this chapter.

7.08.150 - Issuance, renewal or denial of massage establishment or massage business license.

The director shall issue or renew a license unless:

- (a) The application and supporting documentation is incomplete or contains false, misleading or fraudulent statements with respect to any information required;
- (b) The correct business license fee has not been received by the department or investigation fee has not been received by LVMPD;
- (c) The operation, as proposed by the applicant, would not comply with all applicable laws, including, but not limited to, all requirements of this chapter and Clark County's building, zoning, fire and health regulations;
- (d) The applicant fails to satisfy any qualification or requirement imposed by this code, or other local, state or federal law or regulation pertaining to such activities;
- (e) The applicant fails to comply with any conditions of the license;
- (f) The applicant, licensee, or a principal of the licensee has been subject, in any jurisdiction, to disciplinary action of any kind with regard to a massage business license or Nevada State Board of Massage Therapist License to the extent that such disciplinary action reflects on the qualifications, acceptability or fitness to hold a license
- (g) The applicant has been convicted of acts which would constitute a crime involving violence, prostitution or other sex crimes, a violation of any federal or state law regulating the distribution of any controlled substance or any dangerous drug as defined in Chapter 454 of NRS, or involving any federal, state or local law or regulation relating to the same or a similar business within the past two years if the conviction was a

misdemeanor, excluding misdemeanor traffic violations; or within five years if the conviction was a felony;

- (h) Any of the following is found: the funds or the source of funds invested in or to be invested in the business is found to be unsuitable; the financing of the business cannot be established to a suitable source; or if the financier or any person providing any funding or source of funding for the business cannot be established or is found to be unsuitable. A person or source of funds is deemed suitable if the person or supplier of funds is a person of good character, honesty and integrity, and is a person whose prior activities, criminal record, if any, reputation, habits and associations do not: pose a threat to the public interest of the county or to the effective regulation and control of the various types of businesses offering massage as defined in this chapter; create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of the business or the carrying on of the financial arrangements incidental thereto; give to the massage industry of the county a disreputable, unsavory, or dishonest reputation; or bring discredit or dishonor to the community; or
- (i) Substantial information exists which tends to show that the applicant is dishonest, corrupt, or has engaged in deceptive practices on the public.

If the director denies a license, the applicant may appeal the denial to the board by filing written notice with the director within thirty days after receipt of notice of the denial. After notice and hearing, the board may affirm or reverse the denial and/or condition/limit the license as the evidence may warrant.

7.08.160 - Revocation, suspension, limitation or nonrenewal of massage licenses.

Any license issued under this chapter is subject to suspension, revocation, limitation, or nonrenewal by the board of county commissioners, the director, or the director's designee, after notice and hearing, which notice and hearing shall comply with the requirements of Chapter 8.08 of the Clark County Code, if any of the following events occur:

- (a) The licensee has violated any provision of this chapter;
- (b) Any grounds exist which would have warranted the denial or issuance of such license upon original application or renewal as listed in Section 7.08.150
- (c) The business has been conducted in an unlawful manner as defined in the Clark County Code and/or the Nevada Revised Statutes;
- (d) The licensee has been convicted of acts which would constitute a crime involving prostitution or other sex crimes, violence, a violation of any federal or state law regulating the distribution of any controlled substance or any dangerous drug as defined in Chapter 454 of NRS, or involving any federal, state or local law or regulation relating to the same or a similar business within the past two years if the conviction was a misdemeanor, excluding misdemeanor traffic violations; or within five years if the conviction was a felony;
- (e) The conduct or activities of the licensee under the license constitutes a detriment to the public safety, morals, health or general welfare;
- (f) The licensee is guilty of identifying himself or herself as or implying that he or she is a member of a branch of the healing arts unless so registered in Nevada by the regulatory agency or board governing that particular profession;

- (g) The licensee has allowed their business license to be displayed in a place of business other than the business location for which it was issued or has allowed another person to use the business license to practice massage;
- (h) The licensee is engaged in the business or practice of massage under a false or assumed name when the use of such false or assumed name is not otherwise permitted by law, or is impersonating another practitioner of a like or different name.
- (i) The licensee fails to provide written notification to Business License within seven (7) business days of any of the licensee's arrests for any crimes in any jurisdiction; or
- (j) The licensee fails to maintain the minimum qualifying standards to possess a valid Nevada State Board of Massage Therapist License as established by the State of Nevada Board of Massage Therapists.

Each licensee shall be responsible for the conduct of their employees during the cause and scope of employment or affiliation. In any license suspension, limitation, revocation, or nonrenewal proceedings, the fact that the licensee did not have actual knowledge of the events complained of shall be no defense.

7.08.170 - Expiration and renewal of massage licenses.

Each massage establishment or massage business license shall expire semiannually. Any authority conferred upon a licensee by the license shall cease upon its expiration and such person shall not perform any services for which a license is required until the license is renewed. Massage licenses shall become delinquent if not received by the department on or before the fifteenth day following the due date. If payment is not received by the department on or before the thirtieth day following the due date, ten percent of the license

fee shall be assessed as a penalty charge. If payment is not received by the department on or before the sixtieth day following the due date: (1) the license shall be deemed revoked; (2) all business activity must cease; and (3) twenty percent of the license fee shall be assessed as a penalty charge. If payment is received by the department after the sixtieth day and on or before the ninetieth day following the due date, the license may be reinstated by the director with the payment of: (1) all delinquent license fees; (2) a penalty of twenty-five percent of the license fee; and (3) a forty-five dollar reinstatement fee. In addition, all other applicable Clark County Code requirements must be satisfied. If the renewal or reinstatement does not occur on or before the ninetieth day following the due date, reinstatement is not possible and a new application for licensure shall be required in addition to the payment of all delinquent license and penalty fees provided for in this section. It shall be unlawful for the applicant to perform any massage until the new license has been issued.

7.08.180 - Penalties.

Any violation of the provisions of this chapter is a misdemeanor and may result in fine or imprisonment as provided by law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

SECTION 2. If any provision, section, paragraph, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdictions, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this ordinance. It is the intent of the county commission in adopting this ordinance that no portion or provision thereof shall become imperative or

fail by reason of any invalidity or unconstitutionality of any other portion or provision an to this end all provisions of this ordinance are declared to be severable.

SECTION 3. All ordinances, part of ordinances, chapters, sections, subsections, classes, phrases, or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on the _____ day of _____, 2013.

PROPOSED BY: Commissioner _____

PASSED on the _____ day of _____, 2013.

AYES: _____

NAYS: _____

ABSTAINING: _____

ABSENT: _____

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

BY: _____
STEVE SISOLAK, Chair

ATTEST:

DIANA ALBA, County Clerk

APPROVED AS TO FORM:

ROBERT GOWER
Deputy District Attorney