



# City of Phoenix

PLANNING DEPARTMENT

## Staff Report Zoning Ordinance Text Amendment

**Application No Z-TA-14-08** to amend Sections 622, 623, 627, 642, 647 and 659 regarding the regulation of massage therapy establishments.

**Staff recommendation:** Staff recommends approval of Z-TA-14-08 as shown in the recommended text in Attachment A.

### BACKGROUND

The proposed text amendment would be amending the zoning districts listed in the table below, which displays the districts a massage therapy use is currently allowed.

Zoning Districts (Section #)	Current Regulations
C-1 (622), PSC (637)	Not permitted as primary use. Permitted as an accessory use to beauty shop with use permit.
C-2 (623), C-3 (623)	Special Permit required to permit as primary use. Permitted as an accessory use to a beauty shop.
UR (642)	Not permitted as primary use. Permitted as an accessory use to a beauty shop.
PSC Overlay District (659)	Not permitted as primary use. Permitted as an accessory use to a beauty shop and tanning salon.
A-1 (627), A-2 (628)	Permitted as primary use.

The proposed text amendment will allow massage therapy as a primary use starting in the C-1 district. By allowing a massage therapy establishment to locate in a C-1 district it will then permit the use in the PSC, PSC Overlay, C-2, C-3, A-1 and A-2 districts as well. Staff has additionally proposed the use be permitted in the UR District. Any reference to massage therapy as an accessory use to a beauty shop or tanning salon in these districts will therefore be deleted. Massage therapy uses operate in a similar manner as beauty salons, tanning salons and day spas, which are all permitted uses within the C-1 district.

### CITY CODE REGULATIONS

A massage therapy establishment is subject to Part II, Chapter 10, Article III of the City of Phoenix Code. The code contains the complete list of definitions, regulations and processes imposed on massage establishments, practitioners and managers. The City Clerk Department

has the duty to administer this portion of the code and therefore processes the applications for all massage therapy establishments and managers.

The application process requires submitting detailed information regarding the operation of the business. Information required to review an application includes a physical description of the applicant, business hours of the operation, list of services, a floor plan of the business, complete list of employees with their license numbers and fingerprints recorded by the Police Department. It is the responsibility of the applicant to update all the information provided on the application. Changing the services, configuration or addition/substitution of a manager or designated agent would need to be provided to the City Clerk Department before executing the change. All licenses and permits issued for massage establishments and managers expire annually on December 31<sup>st</sup> unless a renewal form and fee are submitted to the City Clerk Department before the first day of January each year.

The entire application process is approximately four weeks and the applications are routed to the Police, Neighborhood Services and Planning Department for review and approval. The City Clerk Department is not responsible for reviewing the individual license required to practice as a massage therapist but the applicant is still required to show proof that they have a valid license approved by the Arizona State Board of Massage Therapy.

#### ARIZONA STATE BOARD OF MASSAGE THERAPY

Massage therapist licenses are processed through the Arizona State Board of Massage Therapy. Title 32, Chapter 42 of the Arizona State Statutes is a compilation of the laws imposed on massage therapists. There are four main types of licenses that can be approved: Regular, Temporary, Provisional and Reciprocity. It takes approximately six months to process a Regular massage therapist license, which is the type of license required for any new massage practitioner. Once an application is administratively reviewed and approved for completeness, which requires a fingerprint report from the Department of Public Safety, the Board is able to review and rule on the application.

An applicant must have successfully completed a course of study in massage therapy or bodywork therapy consisting of a minimum of 700 classroom hours of supervised instruction at a board recognized accredited school. The required classroom hours recently increased from 500 to 700 hours for all applications at the beginning of 2008. In addition, applicants must pass the national exam with the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB). The applicant is exempt from the exam if they attended a Title IV School in Arizona. The classroom hours and exam are the two main requirements for an applicant but the entire list of qualifications are listed in Title 32, Chapter 42, Article 2, Section 32-4222 of the Arizona State Statutes.

A renewal license is required every other year at the time of the licensee's birthday. In order to be approved for renewal the licensee must complete 25 hours of continuing education.

#### ENFORCEMENT

Any massage establishment or manager who has an approved license by the city must allow representatives from the Police Department, and any other federal, state, county, or city agency to inspect the premises of the massage establishment at any time it is lawfully occupied or open for business. Any areas of the establishment available to patrons, locations used to disinfect or

sterilize equipment, store linens and washing facilities are subject to being inspected by the agency. The Police Department completes spot checks when necessary of massage establishments to enforce the City Code.

The City Clerk Department has the power to deny, suspend or revoke a massage establishment or manager's license or permit on the grounds that the establishment or manager has engaged in some unlawful act as listed in Part II, Chapter 10, Article III, Section 10-25.3 of the City Code. The licensee would be personally served or sent by certified mail a notice explaining the cause for denial, suspension or revocation. An appeal of the City Clerk Department's decision would be made to the License Appeal Board.

A suspended massage establishment license would continue for a specified period of not more than one year. Time frames set for a denied or revoked license would depend on the grounds for why the action was taken. For example, a license could not be issued for one year from the date the revocation became effective if the establishment or manager had violated subsection 10-22(D), which lists requirements for items such as ventilation, signage, lighting and equipment maintenance.

The Arizona State Board of Massage Therapy has the power to investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of massage therapy. The licensee is notified of all complaints and if the board finds, based on the information submitted to the State, that it requires emergency action, the board may restrict, limit or order a summary suspension of a license pending proceedings for revocation or other action.

Actions the board can take include requiring a licensee to complete continuing education hours, restrict the licensee's practice, suspend a license, put a licensee on probation and revoke a license. The type of action would depend on what the board deemed appropriate. In addition, if there is a formal interview or formal hearing the board may impose a civil penalty on the licensee between the amount of one thousand to ten thousand dollars for each violation.

Formal proceedings take place when the board finds that the violation warrants suspension or revocation of the license. If the board finds that a licensee has been convicted of prostitution, solicitation or another similar offense, the board would revoke the license. If it is determined that a criminal violation had occurred, the board would provide the evidence to the appropriate criminal justice agency.

The complete list of regulations regarding the Arizona State Board of Massage Therapy enforcement powers can be found in Title 32, Chapter 42 Article 3 of the Arizona State Statutes.

## **CONCLUSION**

The proposed language will provide more flexibility for massage therapy establishments. Attachment B demonstrates how the request will be consistent with the majority of the surrounding cities in the Phoenix Metro area and Tucson, but with a few minor variations. City of Chandler, Gilbert, Glendale, Mesa and Tucson allow the use in all their commercial districts. Staff is confident in the State of Arizona licensing process for individual therapists and the City required licensing for a massage therapy establishment to operate in the city. The existence of Part II, Chapter 10, Article III of the City of Phoenix Code provides sufficient support in regulating massage therapy establishments. This portion of the Code includes a comprehensive

list of definitions, duties and rules for massage therapy establishments.

Staff has concluded after comparing other cities, researching the licensing process, applicable state laws and City Code regulations enforced on massage establishments and practitioners that the intensity of a massage therapy use is comparable to the current permitted uses in the C-1 district. The external business impacts to surrounding properties are analogous to beauty salons, tanning salons and day spas. The proposed change reflects land use requirements for massage therapy establishments in surrounding jurisdictions within the metropolitan Phoenix area.

Attachments:

A - Proposed Language

B – Massage Therapy Land Use Comparison Chart

## ATTACHMENT A

### Proposed Language:

**Section 622.D.13 amended, add new subsection 99 and to renumber Section 622.D. accordingly to read:**

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13. Beauty Shops

- a. ~~Massage therapy, performed by a licensed massage therapist, is permitted as an accessory use subject to obtaining a use permit in accordance with the standards and procedures of Section 307. \*6~~

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99. MESSAGE THERAPY ESTABLISHMENTS AS A PRIMARY USE

99100. Merchandise Brokers Office and Display

*and renumber accordingly.*

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**Section 623.D.20 amended as read:**

20. Beauty Shop +7

- a. ~~Massage Therapy, performed by a licensed massage therapist, is permitted as an accessory use. +7~~

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**Section 627.D.89 be amended and renumbered accordingly to read:**

~~89. Massage Establishments as a Primary Use +3~~

89. ~~90.~~ Meat Packing and Smoking (no slaughtering except rabbits and poultry)

*and renumber accordingly.*

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**Section 642.C.2.a(7) be amended, add subsection 24 and to renumber Section 642.C.2 accordingly to read:**

(7) Barber or beauty store, ~~with massage services as an accessory use.~~ \*2

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(23) Library. \*2

(24) MASSAGE THERAPY ESTABLISHMENTS

(25)(24) Music, musical instruments (new and used) and recorded music store (new and used). \*2

*and renumber accordingly.*

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**Section 647.A.2.x to be amended and to renumber accordingly as read:**

~~x. Massage establishments as a primary use in the C-2, C-3, and RSC districts.~~ +4

x.-y. Religious missions, including charity dining halls, in the C-3 district. +4

*and renumber accordingly.*

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**Section 659.B.17 and Section 659.B.121 to be amended as read:**

17. Beauty shop:

~~(a) Massage therapy, performed by a licensed massage therapist employed by the beauty salon, is permitted as an accessory use.~~

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121. Tanning salon:

~~(a) Massage therapy, performed by a licensed massage therapist, is permitted as an accessory use.~~

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<b>ATTACHMENT B – Massage Therapy Land Use Comparison</b>				
	<b>Municipality</b>	<b>Link</b>	<b>Definitions/Descriptions</b>	<b>Permitted in:</b>
1.	Chandler, AZ	<a href="http://www.chandleraz.gov/default.aspx?pageid=370">http://www.chandleraz.gov/default.aspx?pageid=370</a>  480-782-3000	Massage categorized as a personal service establishment.	Personal service establishment permitted in commercial districts by right. Requires Use Permit in I-1 (Planned Industrial District).
2.	Gilbert, AZ	<a href="http://www.ci.gilbert.az.us/planning/">http://www.ci.gilbert.az.us/planning/</a>	Personal Services: Provision of services of a personal nature. This classification includes barber shop, beauty salon, cosmetologist, electrolysis, massage therapy, tanning salon, day spa, and nail salon.	<p>Permitted in all commercial districts including their Gateway District and Heritage Village Zoning Center.</p> <p>Permitted in N-O (Neighborhood Office) subject to L1 &amp; L-5 and G-O (General Office) subject to L5 &amp; L7</p> <p><b>Limitations</b>            L1 – Only as a use incidental to the principal use of the property.            L5 - See Gilbert Municipal Code Chapter 14, Article XI for additional regulations regarding massage.            L-7 – Uses shall not be permitted as stand-alone businesses; limitation on square footage of combined uses. See Section 2.506E: Limited Floor Area.</p> <p>In the NO District, the hours that a business may be open to the public are limited to 6:00 a.m. to 11:00 p.m. Increased hours of operation may be permitted with approval of a Conditional Use Permit, provided that the increased hours will not adversely impact the adjacent neighborhood.</p>

	Municipality	Link	Definitions/Descriptions	Permitted in:
				<b>Limited Floor Area.</b> In the GO district, Day Care Centers, Dry Cleaning and Laundry Outlets, Restaurants, Entertainment and Recreation Uses, Personal Services and Retail Sales uses shall be permitted with a limitation on combined floor area. Any combination of these uses' square footage shall not exceed 15 percent of the building's gross floor area. Dry Cleaning and Laundry Outlets are limited to drop-off and pick-up services only.
3.	Glendale, AZ	<a href="http://www.glendaleaz.com/planning/zoning.cfm">http://www.glendaleaz.com/planning/zoning.cfm</a>	Professional Office: Offices where services are provided that require specialized training or professional certification including but not limited to accountant, appraiser, attorney, architect, landscape architect, engineer, surveyor, stockbroker, physician, dentist, chiropractor, massage therapist, psychologist, and optometrist. No goods or merchandise are sold or exchanged.	Permitted in R-0 (Residential Office), C-0 (Commercial Office), G-0 (General Office), all commercial zones and BP (Business Park) zone by right.  Permitted in M-1 (Light Industrial) commercial service/retail subject to conditional use permit.
4.	Mesa, AZ	<a href="http://cityofmesa.us/Planning/ZoningAdministration/ZoningOrdinance.aspx">http://cityofmesa.us/Planning/ZoningAdministration/ZoningOrdinance.aspx</a>  480-644-2385	Medical offices and clinics, including physical therapy and massage, and chiropractic treatment. The preparation and sale of pharmaceutical, ophthalmic, prosthetic, and similar medical supplies are permitted in conjunction with a medical office or clinic provided such activity is dependent upon, and clearly subordinate to, the primary use; and is not identified from a public street by signage, display, building orientation, or other visual means.	Permitted in all commercial districts (O-S, C-1, C-2 and C-3), manufacturing, industrial and employment districts (PEP, M-1 and M-2), and Town Center Business and Core districts (TCB-1, TCB-2 and TCC)
5.	Tempe, AZ	<a href="http://tempe.gov/planning/documents.htm">http://tempe.gov/planning/documents.htm</a>	Massage establishment means a business that practices or administers within the city, any massage or body work techniques as defined in the Tempe City Code, Chapter 16A, for a fee or income of any kind.	Use permit required for all commercial districts.

	<b>Municipality</b>	<b>Link</b>	<b>Definitions/Descriptions</b>	<b>Permitted in:</b>
6.	Tucson, AZ	<a href="http://www.tucsonaz.gov/planning/codes/luc/">http://www.tucsonaz.gov/planning/codes/luc/</a>	<p>6.3.5 COMMERCIAL SERVICES USE GROUP.          ...          6.3.5.19 <u>Personal Service</u>. Personal Service is a use which provides personal care and appearance services to an individual or provides the cleaning and repair of personal effects. Typical uses include barber and beauty shops, tailors, shoe repair shops, dry cleaning collection agencies, laundromats, massage establishments, and reducing salons.</p>	<p>Allowed in all commercial zones, Mixed Use Zones except MU (subject to Zoning Examiner) and industrial zones by right.</p> <p><b>2.6.4 "MU" MULTIPLE USE ZONE.</b>  <i>2.6.4.1 Purpose. This zone is solely to provide for comparable zoning for areas annexed into the City limits and is not intended for rezoning.</i>          16. Personal Service "<a href="#">29</a>", subject to: Approval through a Zoning Examiner Full Notice Procedure, Sec. 23A-50 and 23A-53 (Ord. No. 9967, §2, 7/1/04)</p>