BILL NO. 1-20-09-1

SUMMARY — An Ordinance to amend Title 7, Chapter 7.08 of the Clark County Code to make changes to Chapter 7.08 to reflect that Clark County Department of Business License no longer regulates individual massage therapists that are licensed by the Nevada State Board of Massage Therapy pursuant to NRS Chapter 640C, and include necessary changes related thereto; make changes relating to the name of the Department of Business License and other regulatory agencies; revises the business license application form requirements for massage businesses; require that massage establishment employ only state-licensed therapists; allow revocation of licenses by the director or designee.

ORDINANCE NO. ______________________
(of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 7, CHAPTER 7.08 OF THE CLARK COUNTY CODE TO MAKE CHANGES TO CHAPTER 7.08 TO REFLECT THAT CLARK COUNTY DEPARTMENT OF BUSINESS LICENSE NO LONGER REGULATES INDIVIDUAL MASSAGE THERAPISTS THAT ARE LICENSED BY THE NEVADA STATE BOARD OF MASSAGE THERAPY PURSUANT TO NRS CHAPTER 640C, AND INCLUDE NECESSARY CHANGES RELATED THERETO; MAKE CHANGES RELATING TO THE NAME OF THE DEPARTMENT OF BUSINESS LICENSE AND OTHER REGULATORY AGENCIES; REVISES THE BUSINESS LICENSE APPLICATION FORM REQUIREMENTS FOR MASSAGE BUSINESSES; REQUIRE THAT MASSAGE ESTABLISHMENT EMPLOY ONLY STATE-LICENSED THERAPISTS; ALLOW REVOCATION OF LICENSES BY THE DIRECTOR OR DESIGNEE; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

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

SECTION 1. Title 7, Chapter 7.08 of the Clark County Code is hereby amended to read as follows:

Chapter 7.08

MASSAGE INDUSTRY
Sections:
7.08.010 Legislative findings.
7.08.020 Definitions.
7.08.030 Exemptions.
7.08.040 License required.
7.08.045 Operating requirements.
7.08.050 License application requirements.
7.08.060 Fees.
7.08.070 Advertising.
7.08.080 [Register Master List of employees [,] and independent massage therapists [and patrons].
7.08.090 Display of license required.
[7.08.100 Requirements of massage therapists.]
7.08.110 [Work identification cards.] Nevada State Board of Massage Therapist license.
7.08.120 Prohibited acts.
7.08.130 Outcall massage.
7.08.140 Transfers prohibited--Change of location.
7.08.150 Issuance, renewal or denial of massage establishment, massage business, [chair massage business,] or independent massage therapist [or outcall massage business] license.
[7.08.155 Work identification card denials, revocations, suspensions, nonrenewals.]
7.08.160 Revocation, suspension, limitation or nonrenewal of massage licenses.
7.08.170 Expiration and renewal of massage licenses.
7.08.180 Penalties.

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 [parlors] 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 [secretly] invested in massage [parlors] establishments or outcall massage operations and have made [secret] 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) [u]Untrained, [unschooled] 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 [the] massage [industry] establishments and massage businesses be regulated. (Ord. 2064 § 2 (part), 1998)

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 [, and/or chair massage business,] including independent contractors (except massage therapists), who work in the establishment or business, [but] 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 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 or independent 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.

"Chair massage business" is the offering and providing of any chair massage as defined herein. The chair massage must be administered by a massage therapist and a health card from the Southern Nevada Health District who holds a valid unexpired work card issued by the Las Vegas metropolitan police department (LVMPD)]. Any chair massage business that contracts or otherwise affiliates with an independent massage therapist for the purpose of performing chair massage shall be jointly responsible for the conduct and business operations of the independent massage therapist. Any misconduct by the independent massage therapist shall reflect on both the independent massage therapist licensee and the chair massage business licensee's continued ability for licensure. A chair massage business may only post its license at the location wherein the practice of chair massage is actually being performed on a regular and continuing basis. However, licenses may also be issued for and posted at the primary residential address of the chair massage business licensee in accordance with all applicable zoning regulations.

(5) "Department" means the Clark County [department of business license] Department of Business License.

(6) "Director" means the director of the Clark County [department of business license] Department of Business License.

(7) "Independent massage therapist" means any person that is self-employed, administers massage as defined in Nevada Revised Statutes 640C, and possesses a valid Nevada Board of Massage Therapist License, [meets the following requirements: (a) administers massage; (b) is a sole practitioner; (c) hires no employees; and (d) has obtained a business license from the department; and (e) possesses a valid Nevada State Board of Massage Therapist license a valid work card from the LVMPD, and a health card from the Clark County health district. An independent massage therapist must comply with all provisions of this chapter and any and all applicable rules and regulations of the health district. An independent massage therapist license authorizes the licensee to: (a) administer a massage to a client in a massage establishment, massage
business, chair massage business, or on the premises of state licensed provider of health care in an area designated for massage and separate from the provider of health care's patient care areas; and (b) administer a massage to a client of the same gender at the client's temporary or permanent residence or at the client's place of business. Any massage business, chair massage business, massage establishment, or state licensed provider of health care, that contracts or otherwise affiliates with an independent massage therapist for the purpose of performing massage shall be jointly responsible for the conduct and business operations of the independent massage therapist. Any misconduct by the independent massage therapist shall reflect on both the independent massage therapist and the massage business, chair massage business, massage establishment, or state licensed provider of health care's continued ability for licensure. An independent massage therapist may only post his or her license at the location wherein the practice of massage is actually being performed by the independent massage therapist on a regular and continuing basis. However, a license is also permitted to be posted at the primary residential address of the independent massage therapist in accordance with all applicable zoning regulations.

(8) "Manager in charge" means the individual designated by the massage establishment [], or massage business [], chair massage business, or outcall massage business] as being responsible for employee supervision and compliance with this chapter. [This individual must be a massage therapist possessing a valid unexpired work card issued by the LVMPD].

(9) "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 [], for the purpose of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of lubricants]. Massage therapy 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. Reflexology, when limited to the hands, feet, and ears and when performed on a client who is fully clothed (excepting footwear), is excluded from this definition.

(10) "Massage 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 [jointly] 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 [both the independent massage therapist and] 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.

(11) "Massage establishment" means any fixed place of business wherein the practice of massage 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 [jointly]
responsible for the conduct of the independent massage therapist. Any misconduct by the independent massage therapist, massage therapist, or ancillary employee shall reflect on [both the independent massage therapist and] 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.

(12) "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, in this chapter and who is an employee of a licensed massage business, chair massage business, and/or massage establishment. A massage therapist must comply with all provisions of this chapter; must possess a valid Nevada State Board of Massage Therapist License work identification card for massage issued by the LVMPD; must possess a valid health card issued by the Southern Nevada Health District Clark County health district; and must comply with any and all applicable rules and regulations of the Southern Nevada Health District Clark County health district.

[[13] "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork which is accredited by the NCCA as a certification board for the massage and bodywork profession.]

[[14] "NCCA" means the National Commission for Certifying Agencies which is the accrediting body of the National Organization for Competency Assurance.]

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

[[15)] (14) "Outcall massage" means any massage which is provided by an independent massage therapist that possesses a valid Nevada State Board of Massage Therapy license, given or provided off the premises of a licensed massage establishment, massage business, or chair massage business by a massage therapist or Independent Massage Therapist who is employed by or has contracted with the massage establishment, massage business, or chair massage business. Outcall massage only allows for same sex massage, except for chair massage businesses, and all massages administered on an outcall basis must be scheduled and recorded by the massage licensee in a register.

[[16)] (16) "Outcall massage business" is the providing of outcall massage. An outcall massage business license is required for any licensed massage establishment, [or] massage business that offers outcall massage. Any business that contracts with an independent massage therapist for the purpose of performing outcall massage shall be jointly responsible for the conduct and business operations of the independent massage therapist. Any misconduct by the independent massage therapist shall reflect on both the independent massage therapist and the massage establishment/chair massage/massage business's continued ability for licensure.

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

[[18)] "Provider of health care" shall be defined as set forth in NRS Chapter 629 and shall be licensed in Nevada. Any state licensed provider of health care that contracts or otherwise affiliates with an independent massage therapist for the purpose of performing massage shall enter into a written agreement with the licensed independent
massage therapist and acknowledge in that agreement that the LVMPD and the
department shall have access to the massage area(s) during all hours of operation. The
state licensed provider of health care is jointly responsible for the conduct of the
independent massage therapist. Any misconduct by the independent massage therapist
shall reflect on both the independent massage therapist and the state licensed provider of
health care's continued ability for licensure.]

[(19)] (16) "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.

[(20)] (17) "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.

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

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

[(23)] (20) "State License" is the license issued by the Nevada State Board of
Massage Therapists pursuant to NRS Chapter 640C. (Ord. 2718 § 1, 2002: Ord. 2439 § 2,

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; [and]

[(f) Independent massage therapists/massage therapists holding a valid
nontemporary license and/or nontemporary work card for massage therapy prior to
January 5, 2000 will not be required to meet the national certification requirements]
described in this chapter unless they allow their license and/or work card to expire, be revoked or nonrenewed. However, such therapists will be required to maintain and provide proof upon request by the LVMPD and/or department of having met continuing education requirements equivalent to those necessary to maintain certification from a national board accredited by NCCA for the purpose of therapeutic massage and bodywork as a condition of continued licensing. Failure to provide such proof may be grounds for disciplinary action against the license and/or work identification card. Further, if any massage therapist/independent massage therapist ever allows his/her work identification card for massage or independent massage therapist business license to expire, be revoked, or non-renewed, then a new application will be required and all provisions of this chapter will apply. (Ord. 2718 § 2, 2002: Ord. 2439 § 3, 2000: Ord. 2090 § 2, 1998: Ord. 2064 § 2 (part), 1998)]

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, [chair massage business,] or provide services as an independent massage therapist [or an outcall massage business], without first obtaining and thereafter maintaining a valid Nevada State Board of Massage Therapist License pursuant to NRS 640C and a Clark County [b]Business [1]License pursuant to Chapter 6 of [this chapter and] this code.
(b) Any independent massage therapist who is licensed in any jurisdiction outside of unincorporated Clark County and who desires to perform massage [, including chair massage,] in unincorporated Clark County, must also obtain a business license for massage from the department in accordance with [this] chapter 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 [, or chair massage business,] who wishes to personally engage in the administering occupation of massage [therapist] shall obtain a [separate] license [and/or] from the Nevada State Board of Massage Therapy [work identification card for massage therapist] in addition to the massage establishment [,] or massage business license pursuant to this chapter [, or chair massage business,].

[Any person who is licensed in unincorporated Clark County as an independent massage therapist and who makes application for an additional independent massage therapist license to operate at another suitable location in unincorporated Clark County, shall not be required to be reinvestigated provided that the applicant's current business is operating in complete compliance with the applicable provisions of the Clark County Code, including but not limited to this chapter.] (Ord. 2718 § 3, 2002: Ord. 2090 § 3, 1998: Ord. 2064 § 2 (part), 1998)

7.08.045 Operating requirements. The operating requirements for a massage establishment [,] or massage business [, chair massage business, and massage offered on the premises of a state licensed provider of health care by a licensed independent massage therapist] are as follows:
(a) A person designated as the manager in charge shall be on the premises at all times of operation [and the person so designated must hold a valid unexpired work
identification card issued by the LVMPD, and a health card issued by the Clark County health district;

(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, [and no massage therapist shall] offer or perform, any service other than those printed, available, and visible;

(c) All employees [, including independent massage therapists,] shall wear opaque, nontransparent outer garments. Said garments shall not expose specified anatomical areas or the chest area;

(d) All [M]assage therapists/independent massage therapists shall must have their valid Nevada State Board of Massage Therapists Licenses [the work identification card, issued by the LVMPD, clearly visible] displayed pursuant to NRS 640C.450 [on their person during business hours;] 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; [at all times if licensed from their home with a home occupation permit; and if licensed on the premises of a licensed massage business, massage establishment, chair massage business, or state licensed provider of health care, the independent massage therapist's license must be clearly posted];

(e) No person shall enter, or be in any part of a massage establishment [,] or massage business [, or chair 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 [, or chair massage business, or on the premises of a state licensed provider of health care,] which is not [immediately] accessible to the director or person [anyone] 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 [, and/or chair 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 [, a current, unrevoked, unexpired, work identification card, issued by the LVMPD];

(i) No massage establishment, massage business, [chair massage business,) or space utilized for massage [on the premises of a state licensed provider of health care] 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, [chair massage businesses,] and space utilized for massage. [on the premises of a state licensed provider of health care] 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 illuminance level is not less than [seven and one-half] five footcandles [with an average illuminance value of not less than ten 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) When any licensed independent massage therapist operates on the premises of a state licensed provider of health care, the following requirements must be met:

(i) There must be a separate entrance/egress from the state licensed provider of health care's patient care areas,

(ii) The space which is utilized for massage on the premises of a state licensed provider of health care cannot open directly into the state licensed provider of health care's patient care areas,

(iii) If a common wall is shared between the space utilized for massage and the provider of health care's patient areas, there can be no door between those areas,

(iv) Separate records from the state licensed provider of health care must be maintained,

(v) No massage shall be offered on the premises of the state licensed provider of health care outside of the provider of health care's normal hours of operation,

(vi) Every massage therapist who performs massage on the premises of a state licensed provider of health care on clients other than the state licensed provider of health care's patients shall be independently licensed, and

(vii) A current copy of the letter of agreement or contract, between the licensed independent massage therapist and the state licensed provider of health care, must be filed with the department at the time application is made for a license to do business at that location; and]

(l) Each massage establishment[,] and massage business[,] chair massage business, and independent massage therapist] 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[health district]. (Ord. 2718 § 4, 2002; Ord. 2090 § 4, 1998: Ord. 2064 § 2 (part), 1998)

7.08.050 License application requirements. Any person desiring to operate a massage establishment[,] or massage business[,] chair massage business, outcall massage business, or act as an independent massage therapist] shall file a written application with the director on a form to be furnished by the department and shall [be investigated] 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. [All license applicants or other persons for which a LVMPD investigation is required shall be investigated for determination of suitability pursuant to Chapter 6.08 of this code and shall pay investigative fees as required by Section 6.08.115 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.

[In addition to the information required by Clark County Code Chapter 6.08, the
applicant shall also furnish the following information to the director as part of or in
addition to the application:

(a) The type of ownership of the massage establishment, massage business,
chair massage business, outcall massage business or independent massage therapist, i.e.,
sole proprietor, partnership, corporation, limited liability company or otherwise;
(b) The name and description under which the business is to be conducted;
(c) A complete list of the names and residential addresses of all massage
therapists of the business, and such list must be kept current with the department;
(d) The following personal information concerning the applicant, all
principals as defined herein, and the manager in charge of the operation of the massage
establishment, massage business, chair massage business, outcall massage business or
independent massage therapist:

(1) Name, sex, complete residence address and residence telephone
number,
(2) Previous residence addresses from the time of the applicant's
eighteenth birthday,
(3) Written proof that each such person is over the age of eighteen
years,
(4) Height, weight, color of hair and eyes,
(5) Two front-view full-face portrait photographs taken within thirty
days before the date of the application and two inches by two inches in size,
(6) The applicant's prior business and financial history covering at
least the ten year period immediately preceding the year of filing the application,
(7) The applicant's experience in the massage industry, including, but
not limited to, whether such person has, within seven years prior to the date of
application, had a massage business, massage establishment, chair massage business,
independent massage therapist, outcall massage business or similar license denied,
revoked or suspended, or has been connected in any manner with a massage business,
massage establishment, chair massage business, independent massage therapist, outcall
massage business or similar business which had its license denied, revoked or suspended
and, if so, the date, place and the reason therefore and the business activities or
occupations of such person subsequent to such action of denial, suspension or revocation,

(8) Proof of current certification by NCBTMB or an equivalent board
accredited by NCCA for the purpose of massage and bodywork, and
(9) All criminal convictions other than misdemeanor traffic violations, for the fifteen-year period immediately preceding the date of application, fully disclosing the offense for which convicted, the date of the conviction, the jurisdiction in which convicted and the sentence imposed;

(c) The names and addresses of five responsible adults who will serve as character references. These references must be persons other than relatives and business associates;

(f) A completed financial history questionnaire;

(g) In all cases in which the premises of a massage business, massage establishment, or chair massage business is not wholly owned by the applicant, the applicant shall furnish to the department: the name and address of the owner or owners of such premises; a copy of all agreements whereby the applicant is entitled to possession of the premises; and documentation describing the interest held in the business by any person other than the applicant;

(h) Every licensee shall furnish to the department complete information pertaining to any change of ownership of any interest in the licensed business or in the premises wherein or whereon the massage business is operated at least thirty days before the date of such change. If the licensee is not a party to the transaction [e] affecting the change of ownership, then such notice to the department must be provided by the licensee immediately upon acquiring knowledge of the change of ownership or any contemplated change of ownership;

(i) If the director determines that a landlord or financier, by reason of the extent of his/her holdings or his/her inherent control financially, cannot, in fact, be separated from the massage business and that, as a practical matter, a single entity exists regardless of the form of organization, the director may require that the landlord, owner, holder of any interest in the premises or business, lender or financier apply for, be investigated, and found suitable pursuant to Clark County Code Chapter 6.08, and pay investigative fees required pursuant to Clark County Code Section 6.08.115;

(j) Such other information that is consistent with the requirements of this section to protect the morals, health, safety and general welfare of the inhabitants of Clark County;

(k) Authorization for the director, or anyone designated by the director, and the LVMPD, or its agents, to seek information and conduct an investigation into the truth of the statements set forth in the application;

(l) Written declaration by the applicant, under penalty of perjury, that the information contained in and supplied with the application is true and correct, said declaration being duly signed, dated and notarized;

(m) If the application is for an independent massage therapist license to offer massage on the premises of a massage business, massage establishment, chair massage business, and/or a state licensed provider of health care, a copy of the agreement between the massage business, massage establishment, chair massage business, and/or state licensed provider of health care and the applicant for an independent massage therapist shall be provided and that agreement shall acknowledge that the LVMPD and the department shall have access to the massage area(s) at all hours of operation;

(n) If the application is for an independent massage therapist license to offer massage on the premises of a massage business, massage establishment, chair massage
business, and/or a state licensed provider of health care, a detailed floor plan showing the
area designated for massage and its relationship to the contracting or primary business if
offered in conjunction with another acceptable primary business, shall be submitted; and

(o) A financial history questionnaire will not be required for an independent
massage therapist unless such therapist is also an owner/officer of a massage business,
massage establishment, or chair massage business (Ord. 2718 § 5, 2002: Ord. 2439 § 4,

7.08.060 Fees. Each massage establishment, massage business [, chair
massage business, outcall massage business], and independent massage therapist must pay [in advance] a semiannual gross license fee in advance in accordance with Chapter 6.12 of this code. [Gross revenue for reporting and payment purposes from the outcall
massage business may be combined with the primary massage license upon approval by
the director. However, the outcall massage business must pay a semiannual flat fee of
twenty-five dollars to keep its license current.] (Ord. 2090 § 6, 1998: Ord. 2064 § 2
(part), 1998)

7.08.070 Advertising. No massage establishment or [,] massage business [, chair
massage business, or outcall massage business, or independent massage therapist]
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. (Ord. 2090 § 7, 1998: Ord. 2064 § 2
(part), 1998)

7.08.080 [Register] Master List of employees [,] and independent massage
therapists [and patrons].
The licensee, or person designated by the licensee, of a massage establishment [,] or
massage business [, outcall massage business, or chair 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. [work card numbers,
and, if independently licensed, their business license. Every business licensed for outcall
massage shall maintain a register book wherein all patrons' names shall be printed legibly
and each patron shall sign his/her name. The managing person shall assure that the
business licensed for outcall massage shall keep an accurate and legible record showing
the name and address of each patron, the name of the massage therapist administering the
treatment, and the type of treatment administered. Such records shall be maintained on
the premises of the business licensed for outcall massage for a period of three years. Such
register books and records as are herein above required, excluding medical records, shall
be made available upon request, written or oral, and without use of subpoena or court
process, to representatives of the department and LVMPD during regular business
7.08.090 Display of license required. The massage business, a massage establishment, a chair massage business, and each state licensed provider of health care contracting or otherwise entering into agreement with one or more massage therapists, 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, and a complete listing of each independent massage therapist and his/her valid, unexpired LVMPD work card numbers in an open and conspicuous place on the premises of the massage establishment, massage business, chair massage business, or when massage is offered on the premises of a state licensed provider of health care to persons other than the state licensed provider of health care's patients, in that area so utilized for massage.] (Ord. 2718 § 7, 2002: Ord. 2064 § 2 (part), 1998)

7.08.100 Requirements of massage therapists. Any person desiring to be employed as a massage therapist in Clark County shall first obtain a referral form from the licensed business they intend to work for. Upon completion of said form, the person wishing to work as a massage therapist shall take the completed form, signed by their prospective employer, to the LVMPD for investigation and determination of suitability for a work card. All applicants shall be investigated for determination of suitability pursuant to Chapter 6.08 of the Clark County Code and shall pay investigative fees as required by Section 6.08.115. It is unlawful for any person to employ, contract, or otherwise affiliate with a person as a massage therapist who does not have a valid unexpired LVMPD work card as required by this chapter. Any person desiring to work as a massage therapist must also comply with the work card requirements as set forth in Chapter 6.10 of the Clark County Code and must furnish all information as set forth in Section 7.08.050(d), (e), (j), (k), and (l) of this chapter. A financial history questionnaire will not be required for a massage therapist unless such therapist is also an owner/officer of the business. (Ord. 2439 § 5, 2000: Ord. 2090 § 9, 1998: Ord. 2064 § 2 (part), 1998)]

7.08.110 [Work identification cards] Nevada State Board of Massage Therapist License. It shall be unlawful for any massage establishment, a chair massage business, 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, valid unexpired work identification card issued in conformity with the provisions of Chapter 6.10. All "ancillary employees" will be referred to the LVMPD for a work identification card on referral forms provided by the LVMPD. All licensees, principals, ancillary employees, and massage therapists as defined herein, shall obtain and maintain a valid unexpired work identification card.] (Ord. 2090 § 10, 1998: Ord. 2064 § 2 (part), 1998)

7.08.120 Prohibited acts. It is unlawful:

(a) For any ancillary employee massage therapist or an independent contractor of any massage establishment, massage business, chair massage business, or
affiliated outcall massage business licensee, to touch or massage the specified anatomical areas of a client or customer;

(b) For a massage therapist to massage a client of the opposite sex, except within the premises of a licensed massage establishment; massage business; or state licensed provider of health care provided, however, this prohibition does not apply to chair massage;

(c) For a massage therapist who is not employed by or under contract with a licensed massage business that is operating within a resort hotel under a contractual arrangement with that resort hotel or owned and operated by that resort hotel to massage any person on the premises of that resort hotel;

[(d)][(a) For an ancillary employee to touch a patron;

[(e)][(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

[(f)][(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 [ or a massage therapist who holds a valid work card issued by the LVMPD for the purpose of massage ] to apply salt glow, mineral rubs, herbs or any other form of treatment which requires touching a patron. (Ord. 2718 § 8, 2002: Ord. 2645 § 1, 2001: Ord. 2439 § 6, 2000: Ord. 2064 § 2 (part), 1998)

7.08.130 Outcall massage. Outcall massage is only permitted by an independent massage therapist on a client [ of the same sex ] at the client's temporary or permanent residence or at the client's place of business provided proper licensure for an independent massage therapist [ outcall massage business ] has been obtained. (Ord. 2090 § 11, 1998: Ord. 2064 § 2 (part), 1998)

7.08.140 Transfers prohibited--Change of location. No massage establishment, massage business, [ chair massage business, outcall 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 [ , chair massage business, outcall massage business or independent massage therapist ] 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. (Ord. 2439 § 7, 2000: Ord. 2090 § 12, 1998: Ord. 2064 § 2 (part), 1998)

7.08.150 Issuance, renewal or denial of massage establishment [ ] or massage business [ , chair massage business, independent massage therapist or outcall 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 [the department]; 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 [work identification card suitability] to the extent that such disciplinary action reflects on the qualifications, acceptability or fitness to hold a license [or work identification card];

(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. (Ord. 2718 § 9, 2002: Ord. 2439 § 8, 2000: Ord. 2090 § 13, 1998: Ord. 2064 § 2 (part), 1998)

[7.08.155 Work identification card denials, revocations, suspensions, nonrenewals. Any work identification card issued by the LVMPD may be denied, revoked, suspended, or nonrenewed for any of the reasons listed in the Clark County Code Sections 6.10.050, 6.10.060, 7.08.150 and 7.08.160. (Ord. 2439 § 9, 2000)]
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 [the Clark County board of commissioners finds] any of the following [facts] 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; [or]
(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. (Ord. 2718 § 10, 2002: Ord. 2090 § 14, 1998: Ord. 2064 § 2 (part), 1998)

Expiration and renewal of massage licenses. Each massage establishment [,] or massage business [, chair massage business, independent massage therapist and outcall 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 ninetyith 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. (Ord. 2718 § 11, 2002: Ord. 2439 § 10, 2000: Ord. 2090 § 15, 1998: Ord. 2064 § 2 (part), 1998)

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. (Ord. 2064 § 2 (part), 1998)

[7.08.190 Restrictions on filing new license and/or work card applications and on the renewal of temporary work cards. License and/or work card applications for massage business, massage establishment, chair massage business and/or independent massage therapist will not be accepted from the date this ordinance is introduced until it and/or an amended version is adopted, whichever occurs first. Any massage therapist holding a temporary or other non-permanent work card on the date the ordinance codified in this chapter is introduced shall not be able to renew that work card until such time as proof of current certification by NCBTMB or an equivalent board accredited by NCCA for the purpose of therapeutic massage and bodywork has been provided to the LVMPD.] (Ord. 2439 § 11, 2000: Ord. 2090 § 16, 1998: Ord. 2064 § 2 (part), 1998)

SECTION 2. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, 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 20th day of January, 2009.

PROPOSED BY: Susan Brager

PASSED on the ____ day of ___________________ 2009.

AYES: ________________________________

____________________________________

____________________________________

____________________________________

NAYS: ________________________________

____________________________________

ABSTAINING: __________________________

ABSENT: ______________________________

____________________________________

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By: _________________________________
    RORY REID, Chairman

ATTEST:

_______________________________
SHIRLEY B. PARRAGUIRRE, County Clerk
This ordinance shall be in force and effect from and after the _____ day of ______________________ 2009.