

ORDINANCE NO. 3293
(ZOA-15-500319 – Development Code Update 2015)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, TO AMEND TITLE 19 - DEVELOPMENT CODE - OF THE HENDERSON MUNICIPAL CODE BY AMENDING CHAPTER 19.5, SECTION 19.5.5.DD.3 AND 19.5.5.DD.4 TO MAKE REVISIONS AND UPDATES TO THE MASSAGE AND REFLEXOLOGY USES, AND MATTERS PROPERLY RELATED THERETO.

- WHEREAS, it is the intent of the City of Henderson to maintain a zoning ordinance for the safe and orderly development of property; and
- WHEREAS, the City of Henderson adopted a new zoning ordinance on January 19, 2010; and
- WHEREAS, a zoning ordinance is considered a “living document” and will invariably need amending to make minor corrections, revisions, and updates as necessary; and
- WHEREAS, except for massage provided as an accessory use to a resort hotel, any establishment providing massage services as an accessory use to a primary business on the date of adoption of the ordinance codified in this section that does not have a conditional use permit for a massage use shall submit a complete application for a conditional use permit for a massage use; and
- WHEREAS, such application must: (1) be submitted to the Community Development and Services Department within six months from the date of adoption of this ordinance; and (2) be scheduled for review and action on a City of Henderson Planning Commission agenda within nine months from the date of adoption of this ordinance; and
- WHEREAS, any application for a conditional use permit for a massage use that is located within 1,000 feet of an existing massage use at the time of the application must submit an application for the same, or fewer, number of massage rooms as originally approved on the zoning compliance check form for the accessory massage use; and
- WHEREAS, except as set forth above, establishments providing massage services as an accessory use to a primary business on the date of adoption of the ordinance codified in this section that submit a complete application for a conditional use permit within the six-month period specified herein will not be subject to the 1,000-foot distance separation to another massage establishment or reflexology business; any establishment providing massage services as an accessory use to a primary business on the date of adoption of the ordinance codified in this section that submits an application for a conditional use permit for a massage use after the six-month period specified herein will be subject to all standards and conditions found in Title 19.5, including the 1,000-foot distance separation to another massage use or reflexology use; and

WHEREAS, any establishment failing to comply with the requirements of this ordinance within the time frame set forth above shall be subject to all of the fines, penalties, and/or criminal charges set forth in the Henderson Municipal Code; and

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

SECTION 1. The moratoriums imposed on May 19, 2015, by Resolution No. 4188 and Resolution No. 4189, and extended by City Council action on September 15, 2015, are of no further force or effect with respect to Title 19.

SECTION 2. The Henderson Development Code, Section 19.5.5.DD.3 and Section 19.5.5.DD.4, is hereby amended and replaced with Exhibit A, hereto attached, consisting of seven pages.

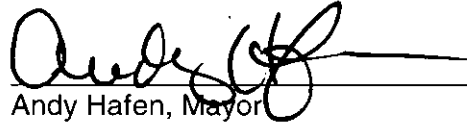
SECTION 3. If any section, subsection, sentence, clause, phrase, provision or portion of this Ordinance, or the application thereof to any person or circumstances, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or provisions of this Ordinance or their applicability to distinguishable situations or circumstances.

SECTION 4. All ordinances, or parts of ordinances, sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

SECTION 5. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Review Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on October 23, 2015, in the Review Journal.

PASSED, ADOPTED, AND APPROVED THIS 20TH DAY OF OCTOBER, 2015.




Andy Hafen, Mayor

ATTEST:


Sabrina Mercadante, MMC, City Clerk

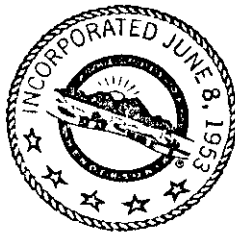
The above and foregoing Ordinance was first proposed and read in title to the City Council on October 6, 2015, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

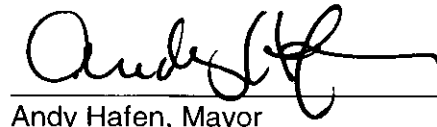
“COUNCIL AS A WHOLE”

Thereafter on October 20, 2015, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held October 20, 2015, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye: Andy Hafen, Mayor
Councilmembers:
Sam Bateman
John F. Marz
Gerri Schroder

Those voting nay: None
Those abstaining: None
Those absent: Debra March




Andy Hafen, Mayor

ATTEST:


Sabrina Mercadante, MMC, City Clerk

Exhibit A
Amended Section 19.5.5.DD.3 and Section 19.5.5.DD.4

19.5.5 COMMERCIAL USES

DD PERSONAL SERVICE

3. Massage

RESIDENTIAL										PUBLIC		
RS-1	RS-2	RS-4	RS-6	RS-8	RM-10	RM-16	RH-24	RH-36	RMH	DH	PS	DP
COMMERCIAL					INDUSTRIAL				MIXED-USE			
CN	CO	CC	CH	CT	CA	IL	IG	IP	MC	MN	MR	
[A]		C	C	[A]	C				C		C	

(a) Definition

Any fixed place of business where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on, or permits to be engaged in or conducted, for money or any other consideration, any massage or health treatments involving massages including, but not limited to, those businesses that provide massage accessory to their principal permitted use. The definition of massage and the regulations set forth in this section do not apply to massage therapy performed by a person specified in NRS 640C.100(1)(a) if the massage therapy is performed in the course of the practice for which the person is licensed.

(b) Standards

(1) All Districts

i. HMC Requirements

All massage establishments shall conform to the requirements of Title 4.84 of the HMC for Massage Establishments.

ii. Hours of Operation

Massage establishments hours of operation shall be limited from 8:00 a.m. to 10:00 p.m. ~~[or as approved through the conditional use permit. If requesting different hours of operation, the applicant shall demonstrate how the modified hours are consistent and compatible to other uses within the same development and with uses on the surrounding properties].~~

iii. Location Requirements

1. No massage establishment may be located closer than 1,000 feet from any other massage establishment, as measured by the shortest line, without regard to intervening obstacles, between the space to be occupied by the proposed massage establishment and the occupied

space of the nearest established or approved massage establishment.

- [2. ~~No massage establishment may be located closer than 500 feet from any parcel where a school, religious facility, park, or child care facility are established or approved, and from any parcel with a residential land use category as designated by the Comprehensive Plan. This separation requirement is measured by the shortest line, without regard to intervening obstacles, between the space to be occupied by the proposed massage establishment and the property line of the nearest established or approved school, religious facility, park, child care facility and residential land use category as designated by the Comprehensive Plan.~~]

2. The foregoing distance requirement[s] may not be waived at any time. ~~[through the conditional use permit only if it can be shown by clear and convincing evidence by the applicant that a waiver of such distance requirements will not compromise the purpose and the general intent of this Code and the HMC to protect the public health, safety, and general welfare of the citizens of the City. Demonstration of existing adequate physical barriers may be considered as such evidence. Adequate barriers include, but are not limited to, such things as an improved drainage facility, freeway, other major roadway with a minimum width of 150 feet, or a topographical feature that prevents vehicular and pedestrian access.]~~

3. Nothing in this subsection shall be construed to authorize a proposed massage establishment simply because a proposed massage establishment may comply with the minimum separation requirement. The City retains all discretion to approve or disapprove a massage establishment use.

iv. Building Design

1. ~~[All exterior windows]~~ Exterior [wall] windows shall not be tinted, [or] covered, or blocked [as to not allow] in such a manner to [an impeded] impede a view inside the massage establishment from the exterior ~~[of the building]~~. Tint shall be no lower than 50% with a maximum of 10% exterior reflectance not including the glass.
2. The establishment shall provide a waiting area for patrons separate from any area wherein massages are provided. There shall be direct access to this area from the main entrance or from the hallway connected only to the main entrance.
3. ~~[No massage services may be given within a]~~ Any cubicle, room, booth, or area within the massage establishment in which a massage may be given may not be [which is]

fitted with a door capable of being locked. ~~[from inside the room, unless the door is an exterior door.]~~

4. ~~[No electronic locking device may be utilized on any interior door.]~~
5. ~~[No massages shall be performed in any room where table showers or shower apparatus are located.]~~

v. Conditional Use Permits

1. Additional conditions may be required as part of the conditional use permit.
2. All massage establishments must comply with approval criteria for a conditional use permit as listed in Section 19.6.6.A.

(2) Accessory Use – Resort Hotels

Massage may be permitted by right as an accessory use to a ~~[hotel]~~, resort hotel ~~[beauty shop, fitness club,]~~ ~~[country club, golf course clubhouse, public or private recreation center, or a reflexology establishment]~~, subject to the following:

- i. ~~[Massage as an accessory use are limited to the hours of operation between 8:00 a.m. to 10:00 p.m. A conditional use permit is required if requesting different hours of operation and the applicant can demonstrate how the modified hours are consistent and compatible to the other uses within the same development and with uses on the surrounding properties.]~~
- ii. ~~[No massage services may be given within any cubicle, room, or booth, or any area within the reflexology establishment which is fitted with a door capable of being locked, unless that door is an exterior door.]~~
- iii. ~~[No massages shall be performed in any room where table showers or shower apparatus are located.]~~
- iv. ~~[The primary business shall be open during all hours massage is offered.]~~ The use shall conform to the building design requirements for massage set forth in 19.5.5.DD.3(b)(1)(iv).
- ii.~~[v.]~~ A detailed floor plan shall be submitted to Community Development at the time of licensing and building permit to show compliance with all requirements of Title 19.
- iii. ~~[vi.]~~ The use shall conform to the requirements of HMC Title 4.

~~{3}~~ CC, CH, MC, and MR Districts

~~A massage establishment may be allowed as a primary use subject to approval of a conditional use permit.]~~

~~[(4) CN and CT Districts~~

~~Massage establishments are prohibited as a primary use.]~~

~~[(5) Exemptions~~

~~— Massage establishments located within a resort hotel and those uses specified in NRS 640C.100 shall not require a conditional use permit.]~~

(c) Off-Street Parking Requirement

(1) Nonresidential districts: 1 space per 250 square feet.

(d) Off-Street Loading Group

None.

(e) Enforcement Authority

(1) Any authorized representative of the city shall have access to every part and portion of the premises for which a conditional use permit is issued under the provisions of this section at any time when such business is open for the transaction of business, and after regular business hours if business is still being conducted, for the purpose of determining that the provisions of this chapter and Title 4 are being complied with. It shall be unlawful for any person to fail to allow any authorized city representative access to the premises or to hinder such representative in any manner.

(2) The conditional use permit may be subject to revocation pursuant to Chapter 19.11 Enforcement in the event the massage establishment business license expires, is revoked, or is otherwise terminated.

4. Reflexology

RESIDENTIAL										PUBLIC		
RS-1	RS-2	RS-4	RS-6	RS-8	RM-10	RM-16	RH-24	RH-36	RMH	DH	PS	DP
COMMERCIAL					INDUSTRIAL				MIXED-USE			
CN	CO	CC	CH	CT	CA	IL	IG	IP	MC	MN	MR	
S	S	S		S					S	S	S	

(a) Definition

Any establishment that involves the application of specific pressure by the use of the licensed practitioner's hands, thumbs, and fingers to reflex points in the client's hands, feet, or ears using alternating pressure, and such techniques as thumb walking, finger walking, hook and back up, and rotation on a reflex. This practice does not involve the removal of any clothes other than shoes or socks.

(b) Standards

The following standards apply in all districts:

(1) HMC Requirements

- i. All reflexology establishments shall conform to the requirements of Title 4.85 of the HMC for Reflexology.

(2) Hours of Operation

- i. Reflexology establishment hours of operation shall be limited to 8:00 a.m. to 10:00 p.m. or the hours of operation for the specific development, whichever is more restrictive. A conditional use permit is required if requesting different hours of operation, and the applicant shall demonstrate how the modified hours are consistent and compatible to other uses within the same development and with uses on the surrounding properties.
- ii. The primary business of reflexology must be provided during all times the business is open.

(3) Location Requirements

- i. No reflexology establishment may be located closer than 1,000 feet from any other reflexology establishment, as measured by the shortest line, without regard to intervening obstacles, between the space to be occupied by the proposed reflexology establishment and the occupied space of the nearest established or approved reflexology establishment.
- ii. ~~[No reflexology establishment may be located closer than 500 feet from any parcel where a school, religious facility, park, or child care facility are established or approved, and from any parcel with a residential land use category as designated by the Comprehensive Plan. This separation requirement is measured by the shortest line, without regard to intervening obstacles, between the space to be occupied by the proposed reflexology establishment and the property line of the nearest established or approved school, religious facility, park, child care facility, and residential land use category as designated by the Comprehensive Plan.]~~
- ii. The foregoing distance requirements may be waived through the conditional use permit only if it can be shown by clear and convincing evidence by the applicant that a waiver of such distance requirements will not compromise the purpose and the general intent of this Code and the HMC to protect the public health, safety, and general welfare of the citizens of the City. Demonstration of existing adequate physical barriers may be considered as such evidence. Adequate barriers include, but are not limited to, such things as an improved drainage facility, freeway, other major roadway with a minimum width of 150 feet, or a topographical feature that prevents vehicular and pedestrian access.
- iii. Nothing in this subsection shall be construed to authorize a proposed reflexology establishment simply because a proposed reflexology establishment may comply with the minimum

separation requirement. The City retains all discretion to approve or disapprove a reflexology establishment use.

(4) Building Design Requirements

- i. ~~[All exterior windows]~~ Exterior ~~[wall]~~ windows shall not be tinted, ~~[or] covered, or blocked [as to not allow]~~ in such a manner to ~~[an impeded]~~ impede a view inside the reflexology establishment from the exterior [of the building]. Tint shall be no lower than 50% with a maximum of 10% exterior reflectance not including the glass.
- ii. The establishment shall provide a waiting area for patrons separate from any area wherein reflexology is provided. There shall be direct access to this area from the main entrance or from the hallway connected only to the main entrance.
- iii. Reflexology shall not take place within an enclosed room. Individual Reflexology areas ~~[rooms shall]~~ may be defined by walls not taller than three feet in height, as measured from the finished floor. ~~[of the tenant space.]~~
- iv. ~~[No electronic locking device may be utilized on any interior door.]~~
- v. A detailed floor plan shall be submitted to Community Development for review and approval at the time of licensing and building permit to show compliance with all requirements of Title 19.
- vi. ~~[The reflexology use shall conform to the requirements of Title 4.85 of the HMC for Reflexology.]~~

(5) Conditional Use Permit

If a conditional use permit is required, the following additional standards shall apply:

- i. All reflexology establishments must comply with approval criteria for a conditional use permit as listed in Section 19.6.6.A.
- ii. Additional conditions may be required as part of the conditional use permit.

(6) CN, CC, CH, CT, CA, MC and MR Districts

Reflexology establishments may be permitted by right as an accessory use to a personal service use, hotel, resort hotel, beauty shop, fitness club, country club, golf course clubhouse, public or private recreation center, or a massage establishment, subject to the following:

- i. Reflexology as an accessory use is limited to hours of operation between 8:00 a.m. to 10:00 p.m. A conditional use permit is required if requesting different hours of operation and the applicant can demonstrate how the modified hours are consistent

and compatible with the other uses within the same development and on the surrounding properties.

- ii. ~~[No reflexology services shall take place within an enclosed room. Reflexology rooms shall be defined by walls not taller than three feet in height, as measured from the finished floor of the tenant space.]~~
- iii. ~~[No electronic locking device may be utilized on any interior door where reflexology occurs.]~~
- iv. ~~[The primary business shall be open during all hours reflexology is offered.]~~
- ~~v. A detailed floor plan shall be submitted to Community Development at the time of licensing and building permit to show compliance with all requirements.]~~
- v. The use shall conform to the requirements of HMC Title 4.

(c) Off-Street Parking Requirement

- (1) Nonresidential districts: 1 space per 250 square feet.

(d) Off-Street Loading Group

None.

(e) Enforcement Authority

- (1) Any authorized representative of the city shall have access to every part and portion of the premises for which a conditional use permit is issued under the provisions of this section at any time when such business is open for the transaction of business, and after regular business hours if business is still being conducted, for the purpose of determining that the provisions of this chapter and Title 4 are being complied with. It shall be unlawful for any person to fail to allow any authorized city representative access to the premises or to hinder such representative in any manner.
- (2) The conditional use permit may be subject to revocation pursuant to Chapter 19.11 Enforcement in the event the reflexology establishment business license expires, is revoked, or is otherwise terminated.