

## **Title 5 BUSINESS LICENSES AND REGULATIONS**

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### **Chapter 5.04 BUSINESS LICENSES GENERALLY\***

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#### **5.04.010 Definitions.**

As used in this chapter:

"Address of record" means the physical address of the business as stated on the original town of Youngtown application for a business license, or another address if the town has been notified in writing by the business licensee.

"Business" means those activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly; and shall include any

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trade, game or amusement, calling, profession, occupation, establishment, delivery of products or performance of services.

"Business license" or "license" means any license, permit or other privilege authorized or regulated by the town of Youngtown Municipal Code to transact business or conduct any other type of activity within the town limits of Youngtown, Arizona regardless of whether a fee has been paid or not.

"Carport sale," also called a "yard sale," "garage sale," "basement sale," "rummage sale," "tag sale," "attic sale," "moving sale," or "junk sale," "block sales" or any other type of residential sale of personal property, is an informal irregularly scheduled event for the sale of used goods such as, but not limited to, household items, clothing, tools, toys, recreation equipment or other used or second hand items normally found in and about the home and sold by private individuals, so that sellers are not required to obtain business licenses or collect sales tax.

"Conduct" means to commence, manage, own, solicit, canvass, practice, transact, engage in or carry on.

"Denial" means the town refuses to issue a business license to any entity or individual.

"Illegal activity" means an act determined by a court of competent jurisdiction to violate a municipal, state or federal criminal law.

"Interim license" means a temporary license issued by the town of Youngtown for the purpose of allowing a business entity to continue operating pending appeal of a suspension, revocation, or nonrenewal of a license.

"Licensee" means any business or person that holds a valid town of Youngtown business license and/or any person designated by the owner(s) or director(s) of a business holding a valid town of Youngtown business license as its/their designated representative.

"Nonrenewal" means the refusal of the town of Youngtown to renew a business license previously issued.

"Premises" means a specific address, or locality, including all appurtenant buildings and parking lots and land.

"Respondent" means an applicant for a new license, applicant for a license renewal, or a licensee who holds a license that the town intends to revoke or actually revokes who is appealing an adverse decision of the town clerk regarding issuance, nonrenewal or revocation of a license pursuant to Sections 5.04.030 and 5.04.040 of this chapter.

"Revocation" means the seizure of, or withdrawal of any business license previously issued.

"Storefront business" means businesses with physical locations in the commercial zones in the town.

"Suspension" means the temporary withdrawal or cessation of a business license after the town reasonably believes that the licensee has used the business license in connection with, or to further or assist, illegal activity as defined in this chapter.

"Transient business" means businesses physically located outside of the town.

"Verification" means written or personal knowledge of the delivery of any written communication to any interested party.

"Working days" means Mondays through Fridays except town holidays.

(Ord. 08-03 § 1 (part))

### **5.04.020 License required.**

- A. It is unlawful for any person to conduct any trade, calling, profession, occupation or business without first having procured a license from the town for such purpose. All licenses shall expire one year

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from the date of issue, except that the town clerk may issue a license effective for one day in connection with town-sponsored events. Licenses for sexually oriented businesses shall be governed by Chapter 5.17, licenses for massage establishments shall be governed by Chapter 5.18; and tattoo and/or body piercing establishments shall be governed by Chapter 5.19. B. Multiple businesses at the same address require separate licenses for each business. A single business with multiple locations shall have separate licenses for each location.

- C. Licenses are not transferable. New owner(s) shall obtain a new license for the business within ten (10) working days of starting work.
- D. A business owner shall notify the town clerk of termination of the business within ten (10) working days of closure. A licensee is responsible for license renewal fees until the town clerk is notified of business termination.
- E. Every person seeking a business license shall complete an application and furnish the information requested by the town clerk. The town clerk may request any information deemed necessary to insure public safety and the collection of license fees and sales taxes. Refusal to provide any requested information is grounds for denial of a license.
- F. Any mistake made by the town clerk in stating, fixing or collecting the amount of any license fee will not prevent, prejudice or stop the collection for the town of the amount actually due from anyone conducting any business in the town.
- G. No greater or less amount of money shall be charged or received for any license than is provided for in this chapter, and no license shall be issued for any period of time other than as provided in this chapter. However, the town may waive any otherwise applicable fee for licenses issued for one day in connection with town-sponsored events.

(Ord. 08-03 § 1 (part))

### **5.04.030 Issuance of license—Denial or nonrenewal—Hearing.**

- A. It is the duty of the town clerk or authorized assistant to prepare and issue a license for any person required to pay a license fee stating the amount, the period of time covered, the name of the business licensed and the location of the business. Revocation or denial of a license by the Arizona Registrar of Contractors shall be cause for denial of a Youngtown business license to a business regulated by the Arizona Registrar of Contractors.
- B. Upon receipt of an application, the town clerk shall complete an investigation within thirty (30) days. If the town clerk determines that the applicant is in compliance with all requirements of this chapter, a license shall be issued.
- C. The Arizona Employer Sanctions Act (Laws 2007, Chapter 279) restricts the town's authority to issue business licenses to those applicants lawfully present in the United States. unless the applicant is exempt as described in subsection (C) below, the town may not issue a business license to an individual unless that individual presents any one of the following documents:
  - 1. Arizona driver license issued after 1996 or an Arizona nonoperating identification license;
  - 2. Driver license issued by any state that verifies lawful presence in the United States;
  - 3. Birth certificate or delayed birth certificate issued in any state, territory, or possession of the United States;
  - 4. United States certificate of birth abroad;
  - 5. United States passport;
  - 6. Foreign passport with a United States visa;
  - 7. Form I-95 with a photograph;

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8. United States citizenship and immigration services employment authorization document or refugee travel document;
9. United States certificate of naturalization;
10. United States certificate of citizenship;
11. Tribal certificate of Indian blood; or
12. Tribal or bureau of Indian affairs affidavit of birth.

If all of the following apply, an individual is exempt from the requirement that he present one of the documents listed in subsection (A) above, prior to being issued a business license:

1. The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country; and
2. The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.

The application shall be denied if the applicant cannot provide satisfactory proof that he is authorized to hold a business license pursuant to the Employer Sanctions Act (Laws 2007, Chapter 279).

- D. If the town clerk determines that grounds exist for denial or nonrenewal of a license, the town clerk shall notify the applicant or licensee in writing of the intent to deny or not renew the license, including a summary of the grounds therefor. The notification shall be by certified mail to the address of record. In the event a license is denied or not renewed, the applicant or licensee shall have five working days from receipt of the written notice of denial or nonrenewal to petition the town clerk in writing, including a statement of reasons why the license should not be denied or should be renewed and requesting a hearing. If a response is not received by the town clerk in the time stated, the denial or nonrenewal shall be final and notice of such will be sent to the applicant or licensee. Within three working days after receipt of a response, the town clerk shall either withdraw the intent to deny or nonrenew and so notify the respondent in writing by certified mail, or shall schedule a hearing before the town manager or the town manager's delegate and shall notify the respondent in writing by certified mail of the date, time and place of the hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence shall not apply. The town manager shall issue a written decision within three working days after the completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent on file with the town clerk. In no event shall more than thirty (30) days elapse between receipt by the town clerk of a request for a hearing and mailing by the town manager of the final decision to the respondent. In the case of an intent to deny or nonrenew a license, the licensee may continue to conduct business under the license pending receipt of the final decision of the town manager. The decision shall be final at the end of five working days after it is mailed and shall constitute final administrative action.

(Ord. 08-03 § 1 (part))

(Ord. No. 10-02, § I, 1-21-10)

### **5.04.040 Revocation of license—Hearing.**

- A. The town clerk shall revoke the license of any person upon the finding of any of the following:
1. False representation on the application;
  2. Failure to pay the license fee;
  3. Consent to the use of the license by another not issued or possessing a valid license;
  4. Discovery of the revocation of a license by another community due to criminal activities;

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5. Discovery of criminal activity associated with the use of the license issued by Youngtown;
  6. Receipt of an order to revoke a license(s) pursuant to the State Employer Sanctions Law (A.R.S. Section 23-211 et seq.).
- B. If the town clerk determines that grounds exist for revocation of a license, the town clerk shall notify the licensee in writing of the intent to revoke, including a summary of the grounds therefor. The notification shall be by certified mail to the address of record with the town clerk, or hand delivered. Within five working days of receipt of such notice, the respondent may provide to the town clerk in writing a response which shall include a statement of reasons why the license should not be revoked and may include a request for a hearing. If a response is not received by the town clerk in the time stated, the revocation shall be final and notice of such will be sent to the licensee. Within three working days after receipt of a response, the town clerk shall either withdraw the intent to revoke, and so notify the respondent in writing by certified mail or shall schedule a hearing before the town manager or the town manager's delegate and shall notify the respondent in writing by certified mail of the date, time and place of the hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence shall not apply. The town manager shall issue a written decision within three working days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent on file with the town clerk. In no event shall more than thirty (30) days elapse between receipt by the town clerk of a request for a hearing and mailing by the town manager of a final decision to the respondent. In the case of an intent to revoke a license, the licensee may continue to function under an interim license until appeals are exhausted. The decision shall be final at the end of five working days after it is mailed and shall constitute final administrative action.
- C. An interim license does not constitute permission to violate laws or cause a public nuisance. A business may be immediately closed if it constitutes an immediate threat or danger to public health and safety or property, in accordance with applicable building, fire, health and safety regulations or as determined by the court. An interim license automatically expires upon the final decision of the town manager, except that if an action is brought in a court of competent jurisdiction then the interim license shall expire upon the court's entry of final judgment and shall be surrendered to the town clerk immediately.
- D. A revoked license may not be re-applied for until one year from the anniversary date of the revocation has expired.

(Ord. 08-03 § 1 (part))

### **5.04.050 Payment.**

Annual license fees set forth in this chapter shall be paid prior to issuance to the licensee.

(Ord. 08-03 § 1 (part))

### **5.04.060 Expiration.**

Licenses shall expire one year from the date of issuance, unless the license is issued for a special town-sponsored event, in which case the town clerk may issue a license effective for one day.

(Ord. 08-03 § 1 (part))

### **5.04.070 Exemptions.**

The following businesses are not required to obtain a license:

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- A. Nonprofit organizations that have obtained 501(C)(3) status or other organizations exempt from federal or Arizona taxation;
- B. Businesses physically located outside the town limits whose only contact within the town is the delivery of pre-ordered goods that do not require installation.
- C. Businesses that provide services to the town pursuant to a written contract.

(Ord. 08-03 § 1 (part))

**5.04.080 Schedule of fees.**

- A. Applications for licenses for all businesses shall be accompanied by a nonrefundable application fee in the amount of twenty-five dollars (\$25.00) unless a different amount is set forth in the following schedule.
- B. All storefront businesses shall pay a license fee of one hundred dollars (\$100.00) per year unless a different amount is set forth in the following schedule.
- C. Special License Fee Schedule.

Classification	License Fee
Hospital, rest home, nursing home	\$5.00 per patient room
Hotel	200.00
Home occupation (as defined in Section 17.04.030)	60.00
Licensed liquor sales	200.00 Application fee
Series 6	300.00
Series 7	200.00
Series 8	100.00
Series 9	200.00
Series 10	100.00
Series 11	200.00
Series 12	200.00

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Series 14	100.00
Series 15	200.00
Series 16	200.00
Massage establishment	
Annual fee	100.00
Application fee	200.00
Massage manager permit	
Annual fee	100.00
Application fee	200.00
All notifications of change of location of a massage establishment shall be accompanied by a fee of \$200.00.	
Medical marijuana cultivation, infusion or manufacturing facility	
Annual fee	100.00
Application fee	200.00
Medical marijuana dispensary	
Annual fee	100.00
Application fee	200.00
Models, escorts, dancers	See fees for sexually oriented businesses
Motel	200.00

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Off-track betting (wagering)	500.00 per machine
Peddler (solicitor, hawker, canvasser, or itinerant vendor, invited by private town resident)	200.00 Application fee
	100.00 + bond
Professional services (attorney, chiropractor, chiropodist, dentist, doctor, osteopath, counselor, consultant)	100.00
Property management (commercial)	60.00
Rental ownership of commercial property (one or more commercial rental properties in Youngtown) if owner is not using services of a property management company	60.00
Sexually oriented business	
Annual fee	100.00
Application fee	200.00
Sexually oriented business employee	
Annual fee	100.00
Application fee	200.00
Storage warehouse	
(mini or full size)	100.00
Tattoo and/or body piercing establishment	
Annual fee	100.00
Application fee	200.00
Tattoo artist or practitioner and/or body piercing practitioner	

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Annual fee	100.00
Application fee	200.00
Transient business	60.00
Vending machine	50.00 per machine
Yard service	60.00

(Ord. 08-03 § 1 (part))

(Ord. No. 11-03, § I, 2-17-11)

### **5.04.090 Late fees.**

A late fee in the amount of twenty-five dollars (\$25.00) shall be charged in addition to the renewal license fees for any license that has lapsed more than thirty (30) days. A license lapsed for more than sixty (60) days shall require a new license application.

(Ord. 08-03 § 1 (part))

### **5.04.100 Fingerprint processing.**

Each applicant who is required by this title to submit a full set of fingerprints to the town in connection with applying for or renewing a business license shall submit the fingerprints to the Arizona Department of Public Safety or the town clerk, and the Arizona Department of Public Safety shall use the fingerprints to obtain a state and federal criminal background check pursuant to Arizona Revised Statute 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange the fingerprint data with the Federal Bureau of Investigation.

(Ord. No. 12-03, § I, 2-16-2012)

## **Chapter 5.08 AMUSEMENT DEVICES**

Sections:

[5.08.010 Definitions.](#)

[5.08.020 Application for license.](#)

[5.08.030 Revocation of license—Hearing.](#)

[5.08.040 Obligations of operator and licensee.](#)

**5.08.010 Definitions.**

In this chapter, unless the context otherwise indicates:

"Adult" means one who has attained the legal age of majority, meaning full age, the age at which, by law, a person is entitled to the management of his or her own affairs.

"Crime of moral turpitude" means any of the following offenses:

1. Prostitution or solicitation of prostitution;
2. Dissemination of obscenity;
3. Sale or distribution of harmful material to a minor;
4. Sexual performance of a minor;
5. Possession or distribution of child pornography;
6. Public lewdness;
7. Indecent exposure;
8. Indecency with a child;
9. Engaging in organized animal activity relating to a sexually oriented business;
10. Sexual assault;
11. Molestation of a child;
12. Distribution of a controlled substance; or
13. Any similar offenses to those described above under the criminal or penal code of other states or countries.

"Mechanical or electronic amusement device" means any device or game which, upon the insertion of a coin, token or any other method of activating, enables the operator to use the device as a game, contest of skill or amusement. This definition shall not be limited to standing or table electronic video game devices but shall include similar electronic devices, so-called pin ball games, coin-operated pool tables, marble machines but shall not include coin-operated merchandise vending machines or coin-operated photographic dispensers or musical juke boxes.

"Person or owner" means the person, firm, partnership, corporation, association or entity which shall own or lease such devices or be responsible for the placement or distribution of such devices within the town.

(Ord. 08-03 § 1 (part); Ord. 02-08 (part); prior code § 8-4-1)

**5.08.020 Application for license.**

- A. No person shall keep, use, exhibit or display or cause to be exhibited or displayed or used, any mechanical or electronic amusement device for public patronage or otherwise keep for operation by the public without first obtaining a license issued under the terms and conditions of this chapter.
- B. A yearly license to operate the device shall be secured by submitting an application to the town on forms furnished by the town together with a nonrefundable application fee of twenty-five dollars (\$25.00). The annual fee is fifty dollars (\$50.00).

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- C. A separate application and fee shall be submitted to the town for each machine to be placed in service within the town.
- D. The issued license shall be displayed at all times at or near the location of the device, and it shall be conspicuous.
- E. Before any license is issued, the premises shall be in compliance with all federal, state, county and town statutes, ordinances and codes, regarding fire, safety, traffic and parking. The device shall be located in a conspicuous place on the premises.
- F. A license issued under the provisions of this chapter shall not be assignable to another person or transferable to another premises.

(Ord. 08-03 § 1 (part); Ord. 02-08 (part); prior code § 8-4-2)

### **5.08.030 Revocation of license—Hearing.**

- A. The town clerk shall revoke the license of any person upon the finding of any of the following:
  - 1. False representation on the application;
  - 2. Failure to pay the license fee;
  - 3. Consent to the use of the license by another not issued or possessing a valid license;
  - 4. Discovery of the revocation of a license by another community due to criminal activities;
  - 5. Discovery of criminal activity associated with the use of the license issued by Youngtown;
  - 6. Receipt of an order to revoke a license(s) pursuant to the State Employer Sanctions Law (A.R.S. Section 23-211 et seq.).
- B. If the town clerk determines that grounds exist for revocation of a license, the town clerk shall notify the licensee in writing of the intent to revoke, including a summary of the grounds therefor. The notification shall be by certified mail to the address of record with the town clerk, or hand delivered. Within five working days of receipt of such notice, the respondent may provide to the town clerk in writing a response which shall include a statement of reasons why the license should not be revoked and may include a request for a hearing. If a response is not received by the town clerk in the time stated, the revocation shall be final and notice of such will be sent to the licensee. Within three working days after receipt of a response, the town clerk shall either withdraw the intent to revoke, and so notify the respondent in writing by certified mail or shall schedule a hearing before the town manager or the town manager's delegate and shall notify the respondent in writing by certified mail of the date, time and place of the hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence shall not apply. The town manager shall issue a written decision within three working days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent on file with the town clerk. In no event shall more than thirty (30) days elapse between receipt by the town clerk of a request for a hearing and mailing by the town manager of a final decision to the respondent. In the case of an intent to revoke a license, the licensee may continue to function under an interim license until appeals are exhausted. The decision shall be final at the end of five working days after it is mailed and shall constitute final administrative action.
- C. An interim license does not constitute permission to violate laws or cause a public nuisance. A business may be immediately closed if it constitutes an immediate threat or danger to public health and safety or property, in accordance with applicable building, fire, health and safety regulations or as determined by the court. An interim license automatically expires upon the final decision of the town manager, except that if an action is brought in a court of competent jurisdiction then the interim license shall expire upon the court's entry of final judgment and shall be surrendered to the town clerk immediately.

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- D. A revoked license may not be reapplied for until one year from the anniversary date of the revocation has expired.
- E. The enforcement of this chapter shall be the responsibility of the town manager, the town clerk and the police department. In addition, the police department shall check for the following conditions:

- 1. Curfew violations for minors;
- 2. Violations of any federal, state, county or town statutes, codes or regulations.

Upon finding any violations of the provisions of this chapter or other federal, state, county or town statutes, laws, regulations or codes, the police department shall have immediate summary power to cause the operators to cease operation of the device. The police department shall immediately notify the town clerk of the situation and action taken.

Any licensee, person, corporation, association or entity violating any of the provisions of this chapter shall upon conviction of the violation, be deemed guilty of a misdemeanor and shall be fined in the sum of not more than two hundred dollars (\$200.00), and the license revoked.

- F. All licenses shall expire one year from date of issue.

(Ord. 08-03 § 1 (part); Ord. 02-08 (part); Ord. 02-02 § 3 (part); prior code § 8-4-3)

### 5.08.040 Obligations of operator and licensee.

It shall be the obligation of the operator and licensee:

- A. To permit no disorderly conduct around or near the location of the device;
- B. To permit no gambling on the score or outcome of game devices;
- C. To locate no machine closer than one thousand (1,000) feet of a church, school or hospital, nursing home, rest home or public library;
- D. During the school year, except on scheduled school holidays, Saturday and Sunday to permit any of the following:
  - 1. No person under the age of eighteen (18) years shall be permitted to play or operate the devices, unless accompanied by their parent or guardian.
  - 2. The hours for the above restriction shall be between the hours of seven a.m. and two-thirty p.m.;
- E. To comply with all known federal, state, county and local ordinances, laws and regulations governing such mechanical devices;
- F. To furnish upon request, that the licensee or operator has not within the past five years been convicted of a crime involving moral turpitude;
- G. To give adequate proof that all mechanical or electronically operated devices shall be adequately supervised while in operation by an adult.

(Ord. 02-08 (part); prior code § 8-4-4)

## Chapter 5.12 PEDDLERS AND SOLICITORS

Sections:

[5.12.010 Definitions.](#)

[5.12.020 Application for licenses.](#)

[5.12.030 Fees.](#)

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[5.12.040 Bond required.](#)

[5.12.050 License to be posted.](#)

[5.12.060 Revocation of license—Hearing.](#)

[5.12.070 Newspaper carriers exempt.](#)

### **5.12.010 Definitions.**

In this chapter, unless the context otherwise indicates:

"Peddler" means any person, whether a resident of the town or not, traveling by foot, wagon, automobile, motor truck or any other type of conveyance, from house to house or from street to street, carrying, conveying or transporting goods, wares, merchandise, farm products or provisions, offering them for sale, or making sales and delivering articles to purchasers. The word "peddler" shall include the words "hawker" and "huckster."

"Solicitor" means a person, whether a resident of the town or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever, for future delivery, or for services, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale, or whether he is collecting advance payment on such sales or not.

(Prior code § 8-1-1)

### **5.12.020 Application for licenses.**

- A. Application for licenses by solicitors and peddlers shall be made to the town clerk. Applications shall be sworn and in writing and shall contain the following information:
1. Name and physical description of applicant;
  2. Address;
  3. Fingerprints of the applicant obtained from an authorized agency or law enforcement agency;
  4. A description of the nature of the business to be conducted and the goods to be sold, and if the goods are farm products or provisions, a statement whether they are produced or grown by the applicant;
  5. If the applicant is employed, the name and address of the employer, together with credentials establishing the exact relationship;
  6. The length of time for which the right to do business is desired;
  7. A statement as to whether or not the applicant has been convicted of any crime, including misdemeanors or violations of city or town ordinances, the nature of the offense and the penalty assessed therefor;
  8. Such other information as the town clerk may deem necessary for the proper protection of the town.
- B. Applications shall be accompanied by not less than two passport-type color photographs of the applicant, taken not more than thirty (30) days prior to the date of the application. One photograph shall be attached to the application. Any fees for the photographs, fingerprints and "fingerprint clearance card" shall be paid by the applicant.

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- C. The town clerk shall maintain a record of all applications for licenses remaining in force. In the event a license is not issued, the application shall be retained for a period of six months.

(Ord. 08-03 § 1 (part): Ord. 02-08 (part); prior code § 8-1-2)

(Ord. No. 10-19, § I, 11-18-10)

**5.12.030 Fees.**

A nonrefundable application fee in the amount of two hundred dollars (\$200.00) shall be submitted with the application for a license. The license fee for any peddler, solicitor, canvasser or transient merchant shall be one hundred dollars (\$100.00) per year.

(Ord. 08-03 § 1 (part): prior code § 8-1-3)

**5.12.040 Bond required.**

- A. Before any license as provided in this chapter shall be issued for engaging in a business of peddler, solicitor, canvasser or transient merchant, as defined in this chapter, every applicant plying his or her trade as an individual shall file with the town clerk a surety bond running to the town in the amount of one thousand dollars (\$1,000.00). Every business firm, company or corporation, which has employees or agents acting in the capacity of peddler, solicitor, canvasser or transient merchant, shall file with the town clerk a blanket surety bond covering all such employees or agents and running to the town in the amount of five thousand dollars (\$5,000.00).
- B. Every bond shall be executed by the applicant as principal and at least one surety upon which service of process may be made in the state of Arizona, the bond to be approved by the town attorney. Action on the bond may be brought in the name of the town to the use of the aggrieved person or directly by the aggrieved person.

(Prior code § 8-1-4)

**5.12.050 License to be posted.**

The license issued to the licensee hereunder by the town clerk shall be posted in a conspicuous place if the licensee is using a vehicle or building in his or her business and otherwise must be kept by the person and exhibited at any time upon request.

(Prior code § 8-1-5)

**5.12.060 Revocation of license—Hearing.**

- A. The town clerk shall revoke the license of any person upon the finding of any of the following:
1. False representation on the application;
  2. Failure to pay the license fee;
  3. Consent to the use of the license by another not issued or possessing a valid license;
  4. Discovery of the revocation of a license by another community due to criminal activities;
  5. Discovery of criminal activity associated with the use of the license issued by Youngtown;

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6. Receipt of an order to revoke a license(s) pursuant to the State Employer Sanctions Law (A.R.S. Section 23-211 et seq.);
  7. Failure to file a surety bond within ten (10) days;
  8. As ordered by a court of competent jurisdiction.
- B. If the town clerk determines that grounds exist for revocation of a license, the town clerk shall notify the licensee in writing of the intent to revoke, including a summary of the grounds therefor. The notification shall be by certified mail to the address of record with the town clerk, or hand delivered. Within five working days of receipt of such notice, the respondent may provide to the town clerk in writing a response which shall include a statement of reasons why the license should not be revoked and may include a request for a hearing. If a response is not received by the town clerk in the time stated, the revocation shall be final and notice of such will be sent to the licensee. Within three working days after receipt of a response, the town clerk shall either withdraw the intent to revoke, and so notify the respondent in writing by certified mail or shall schedule a hearing before the town manager or the town manager's delegate and shall notify the respondent in writing by certified mail of the date, time and place of the hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence shall not apply. The town manager shall issue a written decision within three working days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent on file with the town clerk. In no event shall more than thirty (30) days elapse between receipt by the town clerk of a request for a hearing and mailing by the town manager of a final decision to the respondent. In the case of an intent to revoke a license, the licensee may continue to function under an interim license until appeals are exhausted. The decision shall be final at the end of five working days after it is mailed and shall constitute final administrative action.
- C. An interim license does not constitute permission to violate laws or cause a public nuisance. A business may be immediately closed if it constitutes an immediate threat or danger to public health and safety or property, in accordance with applicable building, fire, health and safety regulations or as determined by the court. An interim license automatically expires upon the final decision of the town manager, except that if an action is brought in a court of competent jurisdiction then the interim license shall expire upon the court's entry of final judgment and shall be surrendered to the town clerk immediately.
- D. A revoked license may not be reapplied for until one year from the anniversary date of the revocation has expired.

(Ord. 08-03 § 1 (part); Ord. 02-08 (part); Ord. 02-02 § 3 (part); prior code § 8-1-6)

### **5.12.070 Newspaper carriers exempt.**

Newspaper carriers are exempt from the provisions of this chapter for the sale of newspaper subscriptions.

(Prior code § 8-1-7)

## **Chapter 5.16 MISCELLANEOUS BUSINESS REGULATIONS**

Sections:

[5.16.010 Permission not required for carport sales.](#)

### **5.16.010 Permission not required for carport sales.**

Residents are not required to obtain a permit to have a carport sale.

"Carport sale," also called a "yard sale," "garage sale," "basement sale," "rummage sale," "tag sale," "attic sale," "moving sale," or "junk sale," "block sales" or any other type of residential sale of personal property, is an informal irregularly scheduled event for the sale of used goods such as, but not limited to, household items, clothing, tools, toys, recreation equipment or other used or second hand items normally found in and about the home and sold by private individuals, so that sellers are not required to obtain business licenses or collect sales tax.

- A. Carport sales are limited to four per calendar year per residence for no more than three days in succession in any thirty (30) day period.
- B. All posted "carport sale" or similarly worded signs must be on a self-supporting stake or pole (wood, metal, etc.) and not more than twenty-four (24) inches in height, measured from the ground upward to the top of the sign.
  1. The sign cannot be affixed (taped, nailed, etc.) to any streetlamp, electrical pole, traffic signal or sign pole, utility box or other existing signs or utility structures.
  2. The sign cannot be placed in any public right-of-way, such as a median, or the area between the street curb and sidewalk.
  3. A garage sale sign affixed to a box or any type of surface other than a stake is considered litter and will be removed by an official of the town and destroyed.
- C. Illegal activities during a carport sale will be grounds for immediate termination of the sale activity by police or code enforcement officer and other enforcement action(s) may be taken.
- D. A person violating any of the provisions of this chapter is guilty of a Class 1 misdemeanor and upon conviction may be subject to a fine of up to two thousand five hundred dollars (\$2,500.00) and/or six months in the Maricopa County jail.

(Ord. 08-10 § 1: Ord. 08-03 § 1 (part): Ord. 94-07 § 1: Ord. 91-5 § 1: prior code § 8-5-1)

## **Chapter 5.17 SEXUALLY ORIENTED BUSINESSES**

Sections:

[5.17.010 Purpose.](#)

[5.17.020 Definitions.](#)

[5.17.030 Classification.](#)

[5.17.040 Licenses required.](#)

[5.17.050 Application for sexually oriented business license.](#)

[5.17.060 Issuance of a sexually oriented business license.](#)

[5.17.070 Application for sexually oriented business employee license.](#)

[5.17.080 Issuance of sexually oriented business employee license.](#)

[5.17.090 Fees.](#)

[5.17.100 Inspection.](#)

[5.17.110 Expiration of license—Renewal.](#)

[5.17.120 Suspension.](#)

[5.17.130 Revocation.](#)

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[5.17.140 Procedures for denial, suspension, revocation of licenses—Hearing.](#)

[5.17.150 Revocation of license—Hearing.](#)

[5.17.160 Interim licenses.](#)

[5.17.170 Transfer of license.](#)

[5.17.180 Location of sexually oriented businesses.](#)

[5.17.190 Additional regulations for adult motels.](#)

[5.17.200 Regulations pertaining to exhibition of sexually explicit films, videos or adult live entertainment in viewing rooms.](#)

[5.17.210 Additional regulations for escort agencies.](#)

[5.17.220 Additional regulations for nude model studios.](#)

[5.17.230 Additional regulations concerning public nudity.](#)

[5.17.240 Prohibition against children in a sexually oriented business.](#)

[5.17.250 Hours of operation.](#)

[5.17.260 Exemptions.](#)

[5.17.270 Injunction.](#)

### **5.17.010 Purpose.**

It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the United States Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

### **5.17.020 Definitions.**

In this chapter, unless the context otherwise requires:

"Adult arcade" means any place to which the public is permitted or invited and in which coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, digital video disks, compact disks, computer screens or other image-producing devices are maintained to show images involving specific sexual activities or specific anatomical areas to persons in booths or viewing rooms.

"Adult bookstore," "adult novelty store" or "adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

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1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
2. Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

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

"Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

1. Persons who appear in a state of nudity or semi-nude;
2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
3. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

"Adult live entertainment" means performances where persons appear in a state of nudity or semi-nude or which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

"Adult motel" means a hotel, motel or similar commercial establishment which:

1. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
3. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

"Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

"Adult theater" means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

"Employee" means, with respect to this chapter only, a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise, and whether or not said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

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"Entertainment" means an engaging or diverting presentation of, or participation in, including but not limited to, live singing, dancing, musical instrumentation, dramatic, prosaic or poetic activities, but excluding "adult live entertainment."

"Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

"Escort agency" means a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

"Establishment" means and includes, with respect to this chapter only, any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. The additions of any sexually oriented business to any other existing sexually oriented business; or
4. The relocation of any sexually oriented business.

"Licensee" means, with respect to this chapter only, a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

"Nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" does not include a proprietary school licensed by the State of Arizona or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation, or in a structure:

1. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
2. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
3. Where no more than one nude or semi-nude model is on the premises at any one time.

"Nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

"Person" means an individual, proprietorship, partnership, corporation, association or other legal entity.

"Semi-nude" or in a "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition includes the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

"Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

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2. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

"Sexually oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

"Specified anatomical areas" means:

1. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
2. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

"Specified criminal activity" means any of the following offenses:

1. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; distribution of a controlled substance; or any similar offenses to those described in this section under the criminal or penal code of other states or countries;
2. For which:
  - a. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
  - b. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
  - c. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
3. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

"Specified sexual activities" means any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation or sodomy; or
3. Excretory functions as part of or in connection with any of the activities set forth in subsections A and B.

"Substantial enlargement of a sexually oriented business" means the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas exist on April 17, 2003.

"Transfer of ownership or control of a sexually oriented business" means and includes any of the following:

1. The sale, lease, or sublease of the business;
2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or

3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 03-01 § 1 (part))

**5.17.030 Classification.**

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores, or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;
- F. Escort agencies;
- G. Nude model studios; and
- H. Sexual encounter centers.

(Ord. 03-01 § 1 (part))

**5.17.040 Licenses required.**

It is unlawful:

- A. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the town pursuant to this chapter;
- B. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the town pursuant to this chapter; or
- C. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

(Ord. 03-01 § 1 (part))

**5.17.050 Application for sexually oriented business license.**

- A. Any person who seeks to operate a sexually oriented business within the town must submit an application with a nonrefundable two hundred dollars (\$200.00) application fee for a sexually oriented business license.
- B. An application for a license must be made on a form provided by the town.
- C. All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the town to determine whether the applicant meets the qualifications established in this chapter.
- D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty (20) percent or greater interest

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in the business must sign the application for a license as applicant. Each applicant must be qualified as set forth in this section and each applicant shall be considered a licensee if a license is granted.

- E. The completed application for a sexually oriented business license shall contain the information and shall be accompanied by the documents set forth in this subsection or sub-sections (E)(1) through (E)(13). For individual applicants the information and documents shall relate to the individual. For applicants other than individuals, the information and documents shall relate to each person controlling a twenty (20) percent or greater interest in the applicant entity.
1. If the applicant is:
    - a. An individual, the individual shall:
      - i. State his or her legal name and any aliases, and
      - ii. Submit proof that he or she is at least eighteen (18) years of age;
    - b. A partnership, the partnership, through its duly authorized representative, shall:
      - i. State its complete name, and the names of all partners,
      - ii. Indicate whether the partnership is general or limited, and
      - iii. Submit a copy of the partnership agreement, if any;
    - c. A corporation or other entity, the corporation or other entity, through its duly authorized representative, shall:
      - i. State its complete name,
      - ii. Provide the date of its incorporation or organization, as applicable,
      - iii. Provide evidence that the corporation or entity is in good standing under the laws of its state of incorporation or organization, as applicable, and
      - iv. Provide the name of the registered corporate agent and the address of the registered office for service of process;
  2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he, she or it must:
    - a. State the sexually oriented business's fictitious name, and
    - b. Submit the required registration documents;
  3. Whether the applicant or any of his, her or its operators or employees of the sexually oriented business have been convicted of a specified criminal activity as defined in this chapter and, if so, the specified criminal activity involved and the date, place and jurisdiction of each such occurrence;
  4. Whether the applicant or any of his, her or its operators or employees of the sexually oriented business have had a previous sexually oriented business license under this chapter or other similar ordinances from another town or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant, the applicant's officers or employees (if applicable) have been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation;
  5. Whether the applicant or any of his, her or its operators or employees hold any other sexually oriented business licenses under this chapter or other similar ordinances from another municipality or county and, if so, the names and locations of such other licensed businesses;
  6. The single classification of license for which the applicant is filing;

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7. The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number(s), if any;
8. The applicant's street address (not a post office box);
9. Two copies of passport-style color photograph of the applicant(s) taken within the last thirty (30) days;
10. Fingerprints made by an authorized agency or law enforcement agency. Any fees for the photographs, or fingerprints shall be paid by the applicant.
11. The applicant's driver's license number, and/or his or her state or federally issued tax identification number;
12. A sketch or diagram showing the con-figuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;
13. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting:
  - a. The property lines and the structures thereon for the location proposed for the sexually oriented business.
  - b. All of the following uses existing or established within six hundred (600) feet of the proposed sexually oriented business:
    - i. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities,
    - ii. A public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; "school" includes the school grounds but does not include facilities used primarily for another purpose and only incidentally as a school,
    - iii. A boundary of a residential district as defined in this chapter,
    - iv. A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis court, pedestrian/bicycle path, wilderness area, or other similar public land within the town which is under the control, operation or management of the town or other governmental entity,
    - v. The property line of a lot devoted to a residential use as defined in this chapter,
    - vi. An entertainment business which is oriented primarily towards children or family entertainment, or
    - vii. A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the state.
14. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or adult live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall, in addition to the requirements of this section, comply with any other applicable business license application requirements.

For the purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

(Ord. No. 10-19, § I, 11-18-10)

**5.17.060 Issuance of a sexually oriented business license.**

- A. Within thirty (30) days after receipt of a complete sexually oriented business application, the town clerk shall approve or deny the issuance of a license to an applicant. The town clerk shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true (i) with respect to the individual applicant or (ii) if the applicant is an entity other than an individual, with respect to any person controlling a twenty (20) percent or greater interest in the applicant entity:
1. An applicant is under eighteen (18) years of age;
  2. An applicant is overdue in payment to the town of taxes, fees, fines or penalties assessed against or imposed upon him or her in relation to any business;
  3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
  4. An applicant has been denied a license by the town clerk to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;
  5. An applicant has been convicted of specified criminal activity, as defined in this Section 5.17.020;
  6. The premises to be used for the sexually oriented business have not been approved by the Maricopa County department of environmental services, the Youngtown building department and the Youngtown planning and zoning department as being in compliance with applicable laws and ordinances;
  7. The license fee required by this chapter has not been paid; or
  8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.
  9. Receipt of an order to revoke a license(s) pursuant to the State Employer Sanctions Law (A.R.S. Section 23-211 et seq.).
  10. As ordered by a court of competent jurisdiction.
- B. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the type of sexually oriented business for which the license is issued. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.
- C. For existing buildings, the Youngtown building official shall complete certification that the premises is in compliance or not in compliance with this chapter and any applicable code requirements within twenty (20) days of receipt of the application by the town. For new buildings or buildings being substantially altered for use for a sexually oriented business, the certification shall be complete prior to issuance of a certificate of occupancy for the building, provided that an application for a sexually oriented business license had been submitted.
- D. A sexually oriented business license shall not be issued to an applicant for more than one classification as found in Section 5.17.030.

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

**5.17.070 Application for sexually oriented business employee license.**

- A. Any person who seeks to become an employee of a sexually oriented business within the town must submit an application for a sexually oriented business employee license with a nonrefundable application fee of two hundred dollars (\$200.00).
- B. An application for a license must be made on a form provided by the town.
- C. All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the town to determine whether the applicant meets the qualifications established in this chapter.
- D. Any applicant for a sexually oriented business employee license, shall submit, on a form to be provided by the town, the following information:
  - 1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
  - 2. Age, date and place of birth;
  - 3. Height, weight, hair and eye color;
  - 4. Present residence address and telephone number;
  - 5. Present business address and telephone number;
  - 6. Date, issuing state and number of driver's license or other identification card information; and
  - 7. Conclusive proof that the individual is at least eighteen (18) years of age.
- E. Attached to the application form for a sexually oriented business employee license as provided in this section shall be the following:
  - 1. Two passport-style color photographs of the applicant taken in the past thirty (30) days, measuring two inches by two inches, clearly showing the applicant's face, in addition to a copy of the applicant's fingerprint card obtained from an authorized agency or law enforcement agency. Any fees for the photographs, or fingerprints shall be paid by the applicant;
  - 2. A statement describing whether such applicant previously operated or is seeking to operate, in this or any other county, town, state or country or has ever had a sexually oriented business license, permit, or authorization denied, revoked, or suspended, within the five-year period immediately preceding the date of filing of the application. In the event of any such denial, revocation or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application; or
  - 3. A statement whether the applicant has been convicted of a specified criminal activity as defined in Section 5.17.020 within the five-year period immediately preceding the date of filing of the application, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

(Ord. No. 10-19, § I, 11-18-10)

**5.17.080 Issuance of sexually oriented business employee license.**

- A. Upon the filing of said application for a sexually oriented business employee license, the town clerk shall issue a temporary license to said applicant. The application shall then be referred to the appropriate town departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the

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completed application is filed. After the investigation, the town shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
  2. The applicant is under the age of eighteen (18) years;
  3. The applicant has been convicted of specified criminal activity as defined in Section 5.17.020;
  4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or
  5. The applicant has had a sexually oriented business employee license revoked by the town clerk within two years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to procedures and appeal as set forth in Sections 5.17.140, 5.17.150 and 5.17.160.
- B. A license granted pursuant to this section shall be subject to annual renewal on the anniversary of the date granted. Renewal shall be conditioned upon the written application of the applicant and a finding by the town that neither the applicant nor an employee has been convicted of any specified criminal activity or committed any act during the term of the previous license which would have been grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 5.17.090.

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

### **5.17.090 Fees.**

- A. Every application for a sexually oriented business license or sexually oriented business employee license under this chapter (whether for a new license or for renewal of an existing license) shall be accompanied by a nonrefundable application and investigation fee in the amount of two hundred dollars (\$200.00).
- B. In addition to the application and investigation fee required by this section, every sexually oriented business or sexually oriented business employee that is granted a license (new or renewal) shall pay to the town an annual nonrefundable license fee in the amount of one hundred twenty dollars (\$120.00).
- C. All license fees shall be submitted to the town clerk. The completed application, including a receipt showing payment of the required fee, shall be submitted to the town clerk.

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

### **5.17.100 Inspection.**

- A. An applicant or licensee shall permit representatives of the Youngtown police department, Maricopa County health department, Youngtown building department, the Sun City fire department or other town departments or government agencies to inspect the premises of a sexually oriented business at any time it is occupied or open for business for the purpose of ensuring compliance with the law.
- B. A person who operates a sexually oriented business or his or her agent or employee commits a misdemeanor if he or she refuses to permit such lawful inspection of the premises at any time it is open for business.

(Ord. 03-01 § 1 (part))

**5.17.110 Expiration of license—Renewal.**

- A. Each license shall expire on the anniversary of the date granted and may be renewed only by making a new application for such license. An application for renewal shall be made not less than thirty (30) days before the expiration date. If an application for renewal is made less than thirty (30) days before the expiration date, the expiration date of the license will not be affected and the applicant shall not operate under the terms of the license during any period of time between the expiration of the license and the issuance of a renewal.
- B. When the town denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the denial became final.

(Ord. 03-01 § 1 (part))

**5.17.120 Suspension.**

The town shall suspend a license issued under this chapter for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

- 1. Violated or is not in compliance with any section of this chapter; or
- 2. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

(Ord. 03-01 § 1 (part))

**5.17.130 Revocation.**

- A. The town shall revoke a license if a cause for suspension occurs during the twelve (12) month period after the same license has been suspended.
- B. The town shall revoke a license if it determines that:
  - 1. A licensee gave false or misleading information in the material submitted during the application process;
  - 2. A licensee has knowingly allowed possession, use or sale of controlled substances on the sexually oriented business premises;
  - 3. A licensee has knowingly allowed prostitution on the sexually oriented business premises;
  - 4. A licensee knowingly operated the sexually oriented business or worked as an employee at a sexually oriented business during a period of time when the licensee's license was suspended or expired;
  - 5. Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the sexually oriented business premises;
  - 6. A licensee is delinquent in payment to the town, county or state for any taxes or fees past due;
  - 7. Noncompliance with any licensing requirements under this chapter or zoning requirements under Title 17 of this code;
  - 8. Conducting a business in violation of any federal, state, county or local law;
  - 9. The licensee is convicted of untrue, fraudulent, misleading or deceptive advertising;

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10. The licensee is a corporation and is no longer qualified to transact business in the state.
- C. When the town revokes a license, the revocation shall continue for not less than one year, and the licensee shall not be issued a sexually oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the town finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

(Ord. 03-01 § 1 (part))

### **5.17.140 Procedures for denial, suspension, revocation of licenses—Hearing.**

- A. Licenses issued or required under the provisions of this chapter may be denied, modified, suspended or revoked by the town clerk for the causes specified in this chapter after notice and a hearing before the town manager.
- B. Notice of a hearing shall be given by the town manager, in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, certified mail, to the applicant/licensee at the address shown on the application for license at least ten (10) days prior to the date set for the hearing.
- C. The town manager shall issue a written decision and mail notice thereof within three working days after the hearing, setting forth the findings and grounds for the decision, to the applicant/licensee.

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

### **5.17.150 Revocation of license—Hearing.**

- A. The town clerk shall revoke the license of any person upon the finding of any of the following:
  1. False representation on the application;
  2. Failure to pay the license fee;
  3. Consent to the use of the license by another not issued or possessing a valid license;
  4. Discovery of the revocation of a license by another community due to criminal activities;
  5. Discovery of criminal activity associated with the use of the license issued by Youngtown;
  6. Receipt of an order to revoke a license(s) pursuant to the Employer Sanctions Law (Laws 2007, Chapter 279).
- B. If the town clerk determines that grounds exist for revocation of a license, the town clerk shall notify the licensee in writing of the intent to revoke, including a summary of the grounds therefor. The notification shall be by certified mail to the address of record with the town clerk, or hand delivered. Within five working days of receipt of such notice, the respondent may provide to the town clerk in writing a response which shall include a statement of reasons why the license should not be revoked and may include a request for a hearing. If a response is not received by the town clerk in the time stated, the revocation shall be final and notice of such will be sent to the licensee. Within three working days after receipt of a response, the town clerk shall either withdraw the intent to revoke, and so notify the respondent in writing by certified mail or shall schedule a hearing before the town manager or the town manager's delegate and shall notify the respondent in writing by certified mail of the date, time and place of the hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence shall not apply. The town manager shall issue a written decision within three working days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent on file with the town clerk. In no event shall more than thirty (30) days elapse between receipt by the town clerk of a

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request for a hearing and mailing by the town manager of a final decision to the respondent. In the case of an intent to revoke a license, the licensee may continue to function under an interim license until appeals are exhausted. The decision shall be final at the end of five working days after it is mailed and shall constitute final administrative action.

- C. An interim license does not constitute permission to violate laws or cause a public nuisance. A business may be immediately closed if it constitutes an immediate threat or danger to public health and safety or property, in accordance with applicable building, fire, health and safety regulations or as determined by the court. An interim license automatically expires upon the final decision of the town manager.
- D. A revoked license may not be reapplied for until one year from the anniversary date of the revocation has expired.

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

### **5.17.160 Interim licenses.**

- A. A licensee may obtain an interim license to conduct business operations pending its appeal of town's decision to deny renewal, modify, suspend or revoke a license under this chapter. Licensee shall apply for an interim license by submitting to the town clerk a written request for an interim license, along with a copy of the notice of appeal (filed for judicial review), and any materials required for a license but not previously provided. The town clerk will issue an interim license within one business day of receipt of the foregoing materials. No fee will be charged for an interim license.
- B. If a business has been issued a license or interim license, and this chapter also requires the operator of the business to have an operator license, an operator may obtain an interim license pending the town's decision to issue a final operator license, or pending the town's decision to deny, modify, suspend or revoke the operator license, as the case may be. The interim operator license is only valid with respect to operations at the identified business, and its sole purpose is to allow such business to remain open for business.
- C. An interim license does not constitute permission to violate laws or cause a public nuisance. A business premises may be immediately closed if it constitutes an immediate threat or danger to public health and safety or property, per applicable building, fire, health and safety regulations or as determined by the court.
- D. An interim license automatically expires upon the final decision of the town manager, except that if an action is brought in a court of competent jurisdiction challenging the town manager's final decision, then the interim license shall expire upon the court's entry of final judgment and shall be surrendered to the town clerk within five days thereafter.

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

### **5.17.170 Transfer of license.**

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

(Ord. 03-01 § 1 (part))

### **5.17.180 Location of sexually oriented businesses.**

A sexually oriented business may only be located in such locations as specified in Title 17, Zoning.

(Ord. 03-01 § 1 (part))

**5.17.190 Additional regulations for adult motels.**

- A. Evidence that a sleeping room in a hotel, motel or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.
- B. A person commits a Class 1 misdemeanor if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented license, he or she rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he or she rents or subrents the same sleeping room again. For purposes of this subsection, the terms "rent" and "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(Ord. 03-01 § 1 (part))

**5.17.200 Regulations pertaining to exhibition of sexually explicit films, videos or adult live entertainment in viewing rooms.**

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, adult live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
  - 1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared;
  - 2. The application shall be sworn to be true and correct by the applicant;
  - 3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the town;
  - 4. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises;
  - 5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one

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of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station;

6. It is the duty of the licensee to ensure that the view area specified in subsection (A)(5) of this section remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (A)(l) of this section;
  7. No viewing room may be occupied by more than one person at any time;
  8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot-candles as measured at the floor level;
  9. It is the duty of the licensee to ensure that the illumination described in subsection (A)(8) of this section is maintained at all times that any patron is present in the premises;
  10. No licensee shall allow openings of any kind to exist between viewing rooms or booths;
  11. No person shall make or attempt to make an opening of any kind between viewing booths or rooms;
  12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist;
  13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting; and
  14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.
- B. A person having a duty under subsections (A)(l)—(14) of this section commits a Class 1 misdemeanor if he, she or it knowingly fails to fulfill that duty.

(Ord. 03-01 § 1 (part))

### **5.17.210 Additional regulations for escort agencies.**

- A. An escort agency shall not employ any person under the age of eighteen (18) years.
- B. A person commits a Class 1 misdemeanor if
  - (i) the person is under the age of eighteen (18) and acts as an escort or agrees to act as an escort,
  - (ii) the person is eighteen (18) years or older and acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years, or
  - (iii) the person is the license holder for an escort agency that employs a person under the age of eighteen (18) as an escort.

(Ord. 03-01 § 1 (part))

### **5.17.220 Additional regulations for nude model studios.**

- A. A nude model studio shall not employ any person under the age of eighteen (18) years. The license holder of a nude model studio commits a Class 1 misdemeanor if the nude model studio employs a person under eighteen (18) years of age.

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- B. A person under the age of eighteen (18) years commits a Class 1 misdemeanor if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.
- C. A person commits a Class 1 misdemeanor if the person appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- D. A nude model studio shall not place or permit a bed, sofa or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. 03-01 § 1 (part))

### **5.17.230 Additional regulations concerning public nudity.**

- A. It is a Class 1 misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.
- B. It is a Class 1 misdemeanor for a person who knowingly or intentionally, in a sexually oriented business, appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.
- C. It is a Class 1 misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.
- D. It is a Class 1 misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

(Ord. 03-01 § 1 (part))

### **5.17.240 Prohibition against children in a sexually oriented business.**

A person commits a Class 1 misdemeanor if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

(Ord. 03-01 § 1 (part))

### **5.17.250 Hours of operation.**

No adult theater shall remain open at any time between the hours of one a.m. and eight a.m. on weekdays and Saturdays, and one a.m. and noon on Sundays.

(Ord. 03-01 § 1 (part))

### **5.17.260 Exemptions.**

It is a defense to prosecution under Section 5.17.230 that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school, licensed by the state of Arizona; a college, junior college, or university supported entirely or partly by taxation;

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- B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- C. In a structure:
  - 1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;
  - 2. Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
  - 3. Where no more than one nude model is:
    - a. appearing semi-nude,
    - b. in a state of nudity, or
    - c. displaying specified anatomical areas on the premises at any one time.

(Ord. 03-01 § 1 (part))

### 5.17.270 Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of any federal, state or local law is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.

(Ord. 08-03 § 1 (part): Ord. 03-01 § 1 (part))

## Chapter 5.18 MASSAGE ESTABLISHMENTS\*

Sections:

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[5.18.230 Applicability of regulations to existing businesses.](#)

### **5.18.010 Definitions.**

In this chapter, unless the context otherwise indicates:

"Applicant" means a person who applies for a manager permit or a massage establishment license. If the applicant for a massage establishment is other than an individual, each individual who has a twenty (20) percent or greater interest in the business shall be deemed to be an applicant.

"Employ" means to hire, or to engage or authorize the services of, without regard to compensation, any individual, on a full-time, part-time, or contract basis, whether or not the person employed, hired or engaged is denominated an employee, independent contractor, trainee, student or otherwise.

"Knowingly" means, with respect to conduct or a circumstance described in this chapter, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

"Licensee" means the person in whose name a license has been issued by the town clerk pursuant to this chapter.

"Manager" means an individual authorized by the licensee to exercise overall operational control of the business, to supervise employees, or to fulfill any of the functions required of a manager by this chapter.

"Massage," "massage techniques," or "touching techniques" means any of the following applied to the human body to increase wellness, relaxation, stress reduction, pain relief and postural improvement or provide general or specific therapeutic benefits:

1. The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head.
2. The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees or feet or handheld mechanical or electrical devices.
3. Any combination of range of motion, directed, assisted or passive movements of the joints.
4. Hydrotherapy, including the therapeutic applications of water, heat, cold, wraps, essential oils, skin brushing, salt glows, and similar applications of products to the skin.

"Massage establishment" means any place of business or establishment wherein, for a fee or other consideration, massage techniques, as defined in this section, are administered, practiced or used for the purpose of administering, practicing or using any of the defined massage techniques.

"Massage practitioner" means a person who practices or administers any of the massage touching techniques listed as defined in this section, for a fee, income or compensation of any kind within the town of Youngtown.

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"Permittee" means the person in whose name a permit has been issued by the town clerk pursuant to this chapter.

"Private anatomical areas" means the genitals, perineum, and anal region of any person and the area of the breast that includes the areola and the nipple of any female person.

"Recklessly" means, with respect to a result or to a circumstance described by this chapter, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but who is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

"Respondent" means a person appealing a decision of the town pursuant to Section 5.18.190 of this chapter.

(Ord. 08-03 § 1 (part): Ord. 04-14 § 1 (part))

(Ord. No. 10-18, § I, 11-18-10)

### **5.18.020 Town clerk—Duties.**

It is the duty and responsibility of the town clerk of the town of Youngtown or his or her designee to administer the provisions of this chapter; and pursuant to this duty the town clerk or his or her designee shall issue, renew, deny, suspend or revoke massage establishment licenses, and manager permits as required by this chapter.

(Ord. 04-14 § 1 (part))

### **5.18.030 Licensing of massage establishments required.**

- A. It is unlawful for any person to conduct or operate a massage establishment without first obtaining and maintaining in effect a valid massage establishment license as required by this chapter.
- B. It is unlawful for any person to knowingly or recklessly employ as a massage practitioner any person who does not hold a valid massage practitioner license as required by Section 5.18.060.
- C. It is unlawful for any person licensed pursuant to this chapter to operate under any name or conduct business under any designation not specified in such license.
- D. It is unlawful for any massage establishment licensed pursuant to this chapter to:
  1. Conduct business at any location not specified in such license;
  2. Offer massage or touching techniques in any location of the business not specifically identified as available for such services on the sketch or diagram required pursuant to Section 5.18.050;
  3. Offer massage or touching techniques in any location of the business identified as leased, subleased or licensed for use by any person other than the person specifically identified on the sketch or diagram required pursuant to Section 5.18.050;
  4. Remain open for business, provide services, dispatch massage practitioners, or permit massage practitioners to work off the premises on behalf of that massage establishment at any time between the hours of nine p.m. and six a.m.

(Ord. 04-14 § 1 (part))

(Ord. No. 10-18, § I, 11-18-10)

**5.18.040 New license or permit application—Fee.**

- A. Any person desiring to obtain a massage establishment license, or manager permit, shall make separate application to the town clerk on the form provided by the town clerk for that purpose. The town clerk shall refer each such application to the chief of police for appropriate investigation.
- B. The application shall be accompanied by a non-refundable fee in an amount set forth in Section 5.04.060 of this code.

(Ord. 04-14 § 1 (part))

**5.18.050 Massage establishment license application—Contents—Separate license.**

- A. Each applicant for a massage establishment license shall submit the following:
  - 1. The full legal name, business name, and current residence or legal address of the applicant;
  - 2. Physical description and date of birth;
  - 3. Any other names by which the applicant has been known;
  - 4. The address at which the applicant desires to do business;
  - 5. The applicant's mailing address;
  - 6. If there is more than one applicant as defined in Section 5.18.010, the name of the applicant to be designated as "licensee" in the town's records; a husband and wife may be jointly designated as "licensee";
  - 7. All residence addresses for the five-year period prior to the date of application, and the dates of residence at each;
  - 8. The name or names of all managers;
  - 9. Applicant's business, occupation and employment history for the five-year period immediately preceding the date of application, including addresses and dates of employment;
  - 10. Written proof that the applicant is at least eighteen (18) years old, in the form of a current United States driver's license with picture, or other current picture identification document issued by a state or federal governmental agency of the United States;
  - 11. Two face-only passport-type photographs, two inches by two inches each, taken within thirty (30) days of the application;
  - 12. The business license history of the applicant, including whether any license under which applicant operated, whether in Youngtown or elsewhere, was revoked or suspended, and, if so, the reason for the suspension or revocation, and the applicant's business activity or occupation subsequent to the suspension or revocation;
  - 13. All felony and misdemeanor convictions, excluding those for traffic offenses, and the grounds for such convictions;
  - 14. Fingerprint card for the applicant obtained from an authorized agency or law enforcement agency. Any fees for fingerprints or photographs shall be paid by the applicant;
  - 15. The articles of incorporation, articles of organization, or certificate of limited partnership, together with any amendments thereto, for the applicant, as applicable;
  - 16. A list of services to be offered by the massage establishment;

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17. A sketch or diagram showing the configuration of the overall business premises that includes:
  - a. The location of all interior doors, walls, curtains and room dividers;
  - b. A description of the use of each interior space or room, including a designation of each room or space available for massage by the applicant;
  - c. A designation of each room or space that is being, or is intended to be, leased, subleased or licensed for use by any person other than the applicant and a description of its intended and actual use;
  - d. A designation of each room or space that is being, or is intended to be, leased, subleased, or licensed for use by any person other than the applicant for purposes of offering massage and a description of its intended and actual use.

The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. For purposes of this subsection, a "wall" shall include any interior barrier, including transparent glass, that extends more than fifty-four (54) inches from the level of the finished floor.

18. Such other identification and information as the town clerk may require in order to verify the matters set forth in the application.
- B. A separate license shall be required for each room or space on the business premises of a massage establishment that:
1. Has been designated pursuant to this section as available for lease, sublease or license by any other person; and
  2. Is otherwise required to be licensed as a massage establishment pursuant to this chapter.

(Ord. 08-03 § 1 (part): Ord. 04-14 § 1 (part))

(Ord. No. 10-19, § I, 11-18-10)

### **5.18.060 Massage practitioners—State license required.**

It is unlawful to practice massage in the town without a valid state license issued pursuant to Arizona Revised Statutes Section 32-4221.

(Ord. 04-14 § 1 (part))

### **5.18.070 Manager permit application—Contents.**

An applicant for a manager permit shall submit the following:

- A. Full legal name, physical description and date of birth;
- B. Any other names by which the applicant has been known;
- C. Current residence address;
- D. All residence addresses for the five-year period immediately prior to the date of application, and the dates of residence at each;
- E. All employment for the five-year period preceding the date of application with dates and addresses for each;

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- F. Written proof that the applicant is at least eighteen (18) years old, in the form of a current United States driver's license with picture, or other current picture identification document issued by state or federal government agency of the United States;
- G. All felony and misdemeanor convictions, excluding those for traffic offenses, and the grounds for each;
- H. A copy of fingerprint card for the applicant obtained from an authorized agency or law enforcement agency;
- I. Two face-only two-inch by two-inch passport-type photographs of the applicant taken within thirty (30) days of the application. Any fees for the photographs or fingerprints shall be paid by the applicant;
- J. Such other identification and information as the town clerk may require in order to verify the above required information.

(Ord. 08-03 § 1 (part): Ord. 04-14 § 1 (part))

(Ord. No. 10-19, § I, 11-18-10)

### **5.18.080 Information update.**

- A. Any change in the information required to be submitted by this chapter shall be submitted within ten (10) calendar days of any such change to the town clerk, on a form prescribed by the town clerk for that purpose.
- B. Changes in the services offered by a massage establishment shall only be made after the licensee provides the town clerk with a revised schedule of services offered.
- C. Changes in the use or configuration of the premises of a massage establishment shall only occur after the licensee notifies the town clerk of that change.
- D. Addition or substitution of a manager shall only occur after the licensee notifies the town clerk of that addition or substitution and the new manager obtains a valid permit from the town clerk.
- E. The licensee shall notify the town clerk within ten (10) days of any change in the applicant's or licensee's mailing address.

(Ord. 04-14 § 1 (part))

### **5.18.090 License and permit application investigation.**

All applicants for a license or permit pursuant to this chapter shall present the application containing the information required by Section 5.18.050 or 5.18.070 to the office of the town clerk and shall personally appear at that office prior to issuance of the license. The Youngtown police department shall have a reasonable time within which to investigate the application and the background of the applicant. Based on its investigation, the police department shall recommend approval or denial of the license to the town clerk.

(Ord. 04-14 § 1 (part))

### **5.18.100 Massage establishment license—Special requirements.**

- A. No massage establishment license shall be issued if:

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1. Within the five years immediately preceding his or her application, the applicant was convicted of any felony or misdemeanor offense reasonably related to the functions of a massage establishment licensee;
  2. The application was falsified;
  3. There is an outstanding warrant for the applicant's arrest; or
  4. The applicant fails to comply with any provision of this chapter.
- B. No massage establishment license shall be issued if, within the five years immediately preceding his or her application, the applicant was convicted of an offense proscribed by Chapters 18, 32, and 35.1 of the Arizona Criminal Code (Title 13, Arizona Revised Statutes), or by Section 9.04.050 of this code, or any offense committed outside this state or town that if committed in this state or town would constitute a violation of any offense proscribed by Chapters 18, 32, and 35.1 of the Arizona Criminal Code or by Section 9.04.050 of this code.
- C. An applicant for a massage establishment license, a manager, or a licensee shall permit representatives of the Youngtown police department, the Sun City fire district, and any other federal, state, county, or municipal agency in the performance of any function connected with the enforcement of any code, statute or regulation relating to human health, safety or welfare or structural safety, normally and regularly conducted by such agency, to inspect the premises of a massage establishment for the purpose of ensuring compliance with the law, at any time the massage establishment is lawfully occupied or open for business. The inspection authorized by this subsection shall be limited to:
1. Those areas of the premises available to patrons, provided that no inspection shall be done of a room occupied by a patron until the patron has been given a reasonable opportunity to dress, gather his or her personal effects and exit the room;
  2. All dressing, toilet, bathing and wash basin facilities;
  3. Any location used to disinfect and sterilize equipment as required by subsection D of this section; and
  4. Any location used to store linens as required by subsection D of this section.
- D. A massage establishment licensee shall comply with the following requirements and no massage establishment license shall be issued unless inspection by a town agency or, where appropriate, a county agency, indicates that the site of the establishment complies with each of the following requirements:
1. A readable sign shall be posted at the main entrance identifying the establishment as a massage establishment.
  2. Lighting shall be provided in accordance with the Construction Code of the town of Youngtown. Each room or enclosure where massage is practiced shall have at least one artificial light of not less than forty (40) watts, which shall be in operation when massage is performed.
  3. Ventilation shall be provided in accordance with the Construction Code of the town of Youngtown.
  4. Adequate disinfecting and sterilizing equipment and methods shall be provided and used in the practice of massage and to keep the premises clean and safe for all patrons and employees.
  5. Hot and cold running water, tempered by means of a mixing valve faucet, shall be provided at all times.
  6. Closed cabinets shall be provided, and used, to store clean linens.
  7. Adequate dressing and toilet facilities shall be provided. One dressing room, which may be the same as the massage treatment room, one toilet and one wash basin shall be provided for every three treatment rooms. A minimum of one shower or tub shall be provided for any establishment offering colon therapy, colonics, or any hydrotherapy services including whirlpool

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baths, saunas, steam baths, and herbal wraps. Each dressing room or treatment room shall contain a locker, capable of being locked, for each patron to be served.

8. All pools or spas on the premises shall be issued a permit and inspected as required by the Building Code of the town of Youngtown or Maricopa County, as applicable.
  9. All walls, ceilings, floors, showers, bathtubs, steam rooms, and all other physical facilities must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilets and wash basins shall be thoroughly cleaned each business day of operation. Shower compartments and bathtubs shall be thoroughly cleaned after each use.
  10. Clean and sanitary sheets, towels, and other linens shall be used for each patron of the establishment. The head rest of each table shall be covered with a clean and sanitary covering for each patron.
  11. All wash basins shall have hot and cold running water, tempered by means of a mixing valve faucet; with sanitary towels placed in or upon permanently installed dispensers, and soap in a soap dispenser, or located on or near the wash basin. Each treatment room providing colon therapy, colonics, or hydrotherapy services, including whirlpool baths, saunas, steam baths and herbal wraps shall be equipped with a hand wash basin.
- E. It is unlawful to employ a massage practitioner whose true name and state massage practitioner license number has not been previously provided to the town clerk on a form prescribed by the town clerk for that purpose. It is unlawful to knowingly employ as a massage practitioner any person who does not hold current unrevoked and unsuspended massage practitioner license as required by Section 5.18.060.
- F. The name of any person provided to the town clerk pursuant to subsection E of this section who is no longer employed at the massage establishment shall be reported to the town clerk within ten (10) calendar days after the end of the employment, on a form prescribed by the town clerk for that purpose.
- G. A massage establishment licensee shall file with the town clerk, on a form provided by the town clerk for that purpose, the name and permit number of each person authorized to fulfill the functions of a manager at the massage establishment. If a massage establishment does not have a properly permitted manager recorded with the town clerk pursuant to this subsection, the licensee shall be responsible for fulfilling the duties of a manager pursuant to this chapter.
- H. It is unlawful for any person to knowingly employ at a massage establishment a manager who was convicted within the previous five years of any of the offenses listed in Section 5.18.100(B).
- I. It is unlawful for any person to offer massage in any room or space not designated as a room or space available for massage services on the sketch or diagram required by Section 5.18.050.
- J. It is unlawful for any massage establishment licensee to offer massage in a room or space designated as leased, subleased or licensed for use by any other person on the sketch or diagram required by Section 5.18.050.
- K. On the date of application, and at all times thereafter, a massage establishment applicant or licensee shall comply with the town zoning code and the town building code.
- L. The town clerk may, in his or her discretion, delay granting or denying a massage establishment license for a period of up to ninety (90) days if there is, or within the sixty (60) day period preceding the application date, there was an active massage establishment license at the same location and there is a police department report documenting a violation of this chapter at that establishment or a state prosecution of that establishment relating to a violation of any provision of this chapter. For purposes of this section, an active massage establishment license includes a license that was suspended or revoked, except that a revoked license is no longer active after passage of the appeal period with no appeal taken, or after the town council has ruled in the town's favor. Any license subject to a judicial stay or injunction is an active license.

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- M. The applicant for any massage establishment license for a location at which a massage establishment license was revoked or suspended within the previous six months shall provide to the town clerk a sworn statement, on a form prescribed by the town clerk, verifying that no person not qualified to own, control or manage a massage establishment is involved in the ownership, control or management of the applicant. The town clerk may also request such documents reasonably believed necessary to verify any of the information in the sworn statement. Failure to provide this sworn statement or supporting information shall be cause for denial of the massage establishment application.
- N. A massage establishment license shall not be issued for a physical space at which a licensed massage establishment is in operation.
- O. Any massage establishment application not in full compliance with this chapter sixty (60) days after initial filing shall be denied. Upon written request by the applicant before the expiration of the sixty (60) day period, demonstrating the occurrence of circumstances beyond the applicant's control or other, similar good cause, the town clerk may grant an extension of up to ninety (90) days.

(Ord. 04-14 § 1 (part))

### **5.18.110 Reserved.**

### **5.18.120 Manager permit—Special requirements.**

No manager permit shall be issued if:

- A. The applicant was convicted within the five years immediately preceding the application of:
  - 1. A felony or misdemeanor offense having a reasonable relationship to the operation of a massage establishment;
  - 2. An offense proscribed by Section 9.04.050 of this code; or
  - 3. An offense proscribed by Chapters 18, 32 or 35.1 of Title 13, Arizona Revised Statutes.
- B. The applicant falsified the application; or
- C. There is an outstanding warrant for the applicant's arrest.

(Ord. 04-14 § 1 (part))

### **5.18.130 Display of license or permit.**

- A. Every person to whom a massage establishment license or manager's permit has been granted shall display the license or permit in a conspicuous place upon the business premises that is available to the general public upon entry to the business.
- B. Every individual to whom a state massage practitioner license has been issued shall display that license upon the business premises where that individual is then working either in a public area of the business that is clearly visible to patrons upon entry to the business or at the entrance to the treatment room within which the massage practitioner is then providing services.

(Ord. 04-14 § 1 (part))

**5.18.140 Change of location.**

A change of location of a massage establishment shall be approved by the town clerk, provided that the applicant is in compliance with all town ordinances and regulations and a fee as set forth in Section 5.04.060 of this code is paid. No massage establishment shall be operated or maintained at a location not approved by the town clerk.

(Ord. 04-14 § 1 (part))

**5.18.150 Renewal.**

- A. All persons licensed or permitted pursuant to this chapter shall complete a license or permit renewal form as prescribed by the town clerk.
- B. Within thirty-one (31) calendar days after the expiration date of a manager permit or massage establishment license, the holder of the expired license, or permit may submit the required renewal form and fees and have the license or permit renewed.

(Ord. 04-14 § 1 (part))

**5.18.160 Other unlawful activities—General penalty.**

- A. It is unlawful:
  - 1. For any person to knowingly conduct or operate a massage establishment on the same premises as a massage establishment as defined in this code, an escort bureau as defined in this code, or a cocktail lounge, photography studio, model studio, art studio, telephone answering service, or an adult bookstore as defined in the town zoning code;
  - 2. For any person to knowingly practice or administer any subject or method of treatment listed in Section 5.18.010, under the defined word "massage," whether for fee, gratuity or compensation of any kind:
    - a. In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires;
    - b. To any other person whose private anatomical areas are not covered by opaque material;
    - c. In such a manner that the person touches the private anatomical areas of the individual receiving the treatment; or
    - d. While the person providing the treatment is clothed in a manner that fails to cover his or her private anatomical areas with an opaque material.
  - 3. For any person to knowingly practice or administer any subject or method of treatment listed in Section 5.18.010, regardless of compensation, while on the premises of a massage establishment:
    - a. In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires;
    - b. To any other person whose private anatomical areas are not covered by an opaque material;
    - c. In such a manner that the person touches the private anatomical areas of the individual receiving the treatment; or
    - d. While the person providing the treatment is clothed in a manner that fails to cover his or her private anatomical areas with an opaque material.

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4. For any person, while on the premises of a massage establishment, to knowingly ask or direct a patron to:
    - a. Touch his or her own anus or genitals;
    - b. Touch the anus or genitals of any other person on the premises or the breasts of any female person on the premises; or
    - c. Expose his or her genitals or anus to any other person on the premises.
  5. For any person, while on the premises of a massage establishment, to knowingly place any part of the body of a patron in direct or indirect contact with the anus or genitals of any other person on the premises or the breasts of any female person on the premises;
  6. For any person, while on the premises of a massage establishment, to knowingly offer a patron any service, in exchange for a gratuity or compensation of any description, that does not appear on the schedule of services required by Section 5.18.010;
  7. To knowingly operate or maintain a massage establishment at a location that has not been approved by the town clerk;
  8. For purposes of this subsection, the word "touch" shall include physical contact that occurs through clothing or by means of any object.
- B. Violation of any provision in this chapter is a misdemeanor. Each day any such violation continues shall constitute a separate offense. Revocation or suspension of a license or permit shall not be a defense against prosecution.

(Ord. 04-14 § 1 (part))

### **5.18.170 Revocation, suspension or nonrenewal of license or permit—Grounds.**

- A. The license of a massage establishment, or the permit of a manager, may be revoked, suspended or denied renewal upon any one or more of the following grounds:
1. The licensee or permittee is guilty of fraud in conducting the business of a massage establishment or of fraud or deceit in obtaining a license or permit.
  2. The licensee or permittee was convicted within the last five years in a court of competent jurisdiction of a felony or misdemeanor offense reasonably related to the functions of a massage establishment licensee.
  3. The licensee or permittee is guilty of untrue, fraudulent, misleading or deceptive advertising.
  4. The licensee or permittee is operating as massage establishment under a false or assumed name, or is impersonating another of a like or different name.
  5. The licensee or permittee violated any provision of this chapter regardless of the location where the violation occurred.
  6. In the case of a massage establishment:
    - a. An individual who did not qualify as an applicant at the time the license was issued has since acquired a twenty (20) percent or greater interest in the licensee, without proper notice to the town clerk.
    - b. The massage establishment operated at a location that was not approved by the town clerk.
    - c. The licensee ceased to use the license for purposes of offering massage. Failure to offer massage at a massage establishment for thirty (30) consecutive days shall create a rebuttable presumption that the licensee ceased to use the license for purposes of offering massage and shall result in forfeiture of the license.

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- B. A massage establishment license, or manager permit shall be revoked or denied renewal if, within the five years immediately preceding, the licensee or permittee was convicted of any offense proscribed by Chapters 18, 32, and 35.1 of the Arizona Criminal Code (Title 13, Arizona Revised Statutes) or by Section 9.04.050 of this code, or any offense committed outside this state or town which if committed in this state or town would constitute a violation of any offense proscribed by Chapters 18, 32, and 35.1 of the Arizona Criminal Code or by Section 9.04.050 of this code.
- C. The license of a massage establishment shall be revoked or denied renewal if on two or more occasions within a twelve (12) month period, the licensee or an agent, employee or independent contractor of the licensee, while on the premises of the licensee, commits an offense proscribed by Chapters 18, 32, or 35.1 of the Arizona Criminal Code (Title 13, Arizona Revised Statutes) or by Section 9.04.050 of this code.
- D. The permit of a manager shall be revoked or denied renewal if:
1. The manager knowingly hired a massage practitioner who did not then possess a valid massage practitioner license as required by Section 5.18.060.
  2. A person not licensed pursuant to this chapter or state law provided massage on the premises of a licensed massage establishment, regardless of compensation, while the manager was present at that massage establishment. For purposes of this subsection, a person with a suspended state massage practitioner license is considered not licensed to pursuant to this chapter.
  3. The manager was present on the premises of a massage establishment while two or more violations of Section 5.18.160(A)(3) occurred within a consecutive twelve (12) month period on at least two separate calendar days.  

For purposes of subsections (D)(2) and (D)(3) of this section, it shall not be a defense that the licensee or another manager was present on the premises.
  4. The manager knowingly permitted massage or touching techniques to be offered by the licensee in any location of the business not specifically identified as available for such services on the sketch or diagram required to be submitted to the town clerk pursuant to Section 5.18.050 or in any location of the business identified as leased, subleased or licensed for use by any person other than the licensee on that same sketch or diagram.
- E. To deny, suspend or revoke a license or permit, the town clerk shall personally serve or mail by certified mail to the licensee's or permittee's address as shown on the application, or otherwise more recently of record, a written notice that such license or permit is denied, suspended or revoked. Personal service may be upon the massage establishment licensee or upon any responsible person at the business address of record with the town clerk, or at the actual business address, if different. The cause for such denial, suspension or revocation shall be set forth in the notice. A suspended or revoked license or permit shall be surrendered to the town clerk on demand. An applicant, licensee, or permittee may appeal the denial, nonrenewal, suspension or revocation of a license or permit pursuant to the procedure set forth in Section 5.04.030 of this code. If the denial, nonrenewal, suspension or revocation of a license or permit results from a conviction, the applicant, licensee, or permittee shall be given an opportunity upon appeal to explain the circumstances of the conviction or demonstrate why such conviction does not render the applicant, licensee, or permittee unfit for a license or permit.
- F. Suspension and revocation of a license or permit issued pursuant to this chapter shall not be affected by voluntary surrender of the license or permit.

(Ord. 08-03 § 1 (part): Ord. 04-14 § 1 (part))

### **5.18.180 Denial, revocation or nonrenewal of license or permit.**

- A. Denial, revocation or nonrenewal of a massage establishment license shall continue for:

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1. One year if issued pursuant to:
  - a. Section 5.18.100(H), and the applicant or licensee shall not be issued a massage establishment license for one year from the date denial, revocation or nonrenewal becomes effective,
  - b. Section 5.18.170(A)(6);
2. Five years if issued pursuant to:
  - a. Section 5.18.100(A) as the result of a conviction, provided, however, that an applicant shall not be granted another license until five years have elapsed from the date of conviction,
  - b. Section 5.18.100(B) or Sections 5.18.170(A)(1), (3) or (4),
  - c. Sections 5.18.100(H), (I), or (J) if the denial, revocation or nonrenewal involved fraud, misrepresentation or deceit on the part of the applicant or licensee.
- B. The denial, revocation or nonrenewal of a manager's permit shall continue for five years if issued pursuant to:
  1. Section 5.18.100(A), provided, however, that an applicant shall not be granted another permit until five years have elapsed from the date of the conviction;
  2. Section 5.18.100(B);
  3. Sections 5.18.170(A)(1), (3) or (4);
  4. Section 5.18.170(A)(2), provided, however, that an applicant shall not be granted another permit until five years have elapsed from the date of the conviction;
  5. Section 5.18.170(B), provided, however, that an applicant shall not be granted another permit until five years have elapsed from the date of the conviction;
  6. Section 5.18.170(D).
- C. The suspension of a massage establishment license shall continue for a specified period not to exceed one year. No new massage establishment application may be approved, or license or permit granted, for any person, regardless of the percentage of interest that person possesses in the new applicant, who has had a license or permit suspended pursuant to this chapter, until the period of that suspension has expired.
- D. The revocation or suspension of a license required to comply with any court order shall last as long as is directed by the court or applicable law.
- E. The fact that a conviction is being appealed or a judgment of guilt is set aside pursuant to A.R.S. Section 13-907 shall have no effect on the denial, suspension, revocation or nonrenewal of a license under this chapter.

(Ord. 08-03 § 1 (part): Ord. 04-14 § 1 (part))

### **5.18.190 Appeal.**

- A. Any person aggrieved by the denial, modification, suspension, or revocation of an application for license or the revocation of a license under this chapter shall have the right to appeal to the town manager. The appeal must be filed with the town clerk no later than five days after the town clerk's decision has been duly mailed to the person, and must consist of a written statement fully describing the grounds for appeal.
- B. Within three working days after receipt of a response, the town clerk shall schedule a hearing before the town manager or the town manager's delegate and shall notify the respondent in writing by certified mail of the date, time and place of the hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence shall not

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apply. The town manager shall issue a written decision within three working days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent on file with the town clerk. In no event shall more than thirty (30) days elapse between receipt by the town clerk of a request for a hearing and mailing by the town manager of a final decision to the respondent. In the case of an intent to revoke, suspend or nonrenew a license, the licensee may continue to function under an interim license pending receipt of the final decision of the town manager. The decision shall be final at the end of five working days after it is mailed and shall constitute final administrative action.

(Ord. 08-03 § 1 (part): Ord. 04-14 § 1 (part))

### **5.18.200 Interim licenses.**

- A. A licensee may obtain an interim license to conduct business operations pending its appeal of town's decision to deny renewal, modify, suspend, or revoke a license under this chapter, unless the revocation or suspension was court ordered. Respondent shall apply for an interim license by submitting to the town clerk a written request for an interim license, along with a copy of the notice of appeal (filed for judicial review), and any materials required for a license but not previously provided. The town clerk will issue an interim license within one business day of receipt of the foregoing materials. No fee will be charged for an interim license.
- B. If a business has been issued a license or interim license, and this chapter also re-quires the operator of the business to have an operator license, an operator may obtain an interim license pending the town's decision to issue a final operator license, or pending the town's decision to deny, modify, suspend or revoke the operator license, as the case may be. The interim operator license is only valid with respect to operations at the identified business, and its sole purpose is to allow such business to remain open for business.
- C. An interim license does not constitute permission to violate laws or cause a public nuisance. A business premises may be immediately closed if it constitutes an immediate threat or danger to public health and safety or property, per applicable building, fire, health and safety regulations or as determined by the court.
- D. An interim license automatically expires upon the final decision of the town manager, except that if an action is brought in a court of competent jurisdiction. The interim license shall expire upon the court's entry of final judgment and shall be surrendered to the town clerk within five days thereafter.

(Ord. 08-03 § 1 (part): Ord. 04-14 § 1 (part))

### **5.18.210 Transfer of license.**

A licensee shall not transfer a license to another, nor shall a licensee operate a massage establishment under the authority of a license at any place other than the address designated in the application.

(Ord. 04-14 § 1 (part))

### **5.18.220 Exemptions.**

- A. The provisions of this chapter shall not apply to:
  - 1. Health care professionals licensed pursuant to Title 32 of the Arizona Revised Statutes practicing within the scope of that license;

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2. Registered nurses, licensed practical nurses, certified nursing assistants, licensed physician assistants, medical assistants, licensed physical therapists, certified physical therapist assistants, licensed occupational therapists, or licensed occupational therapy assistants, when acting under the supervision of a licensed physician or osteopath, while on the business premises of that physician or osteopath, or pursuant to a prescription written by a licensed physician or osteopath. For purposes of this subsection "business premises" shall include only those premises at which the licensed physician or osteopath regularly treats patients;
  3. Individuals employed or acting as trainers for any bona fide amateur, semiprofessional or professional athlete or athletic team;
  4. Individuals licensed by the laws of this state as barbers, cosmetologists, aestheticians, or nail technicians provided their activity is limited to their scope of practice set forth in Title 32 of the Arizona Revised Statutes;
  5. Individuals wholly employed in the sale of clothing, cosmetics, jewelry or sporting equipment insofar as these individuals must incidentally touch a customer to properly fit or sell the product, provided that the product is sold at no more than its standard market price;
  6. Individuals wholly engaged in specialized weight reduction techniques, provided that touching of the body is incidental to the procedure;
  7. An enrolled student of a school or institution of learning licensed by the state board for private postsecondary education or an equivalent board from outside this state, or accredited by an accrediting agency recognized by the United States Department of Education or the council on postsecondary accreditation, while on the business premises of that school or institution of learning, provided that the student receives no compensation or gratuity of any kind, other than course credit, in exchange for the services rendered.
- B. Any exemption granted in this section is effective only insofar as and to the extent that the bona fide practice of the business or profession of the person exempted overlaps into the field comprehended by this chapter, and exemptions granted in this section are solely for those activities performed in the course of the bona fide practice of the business or profession of the person exempted.

(Ord. 04-14 § 1 (part))

### **5.18.230 Applicability of regulations to existing businesses.**

On or before January 31, 2005, all massage establishments licensed by the town clerk on or before December 31, 2004, shall provide to the town clerk, on a form prescribed by the town clerk for this purpose, the list of managers required by Section 5.18.050(A)(8), the list of services required by Section 5.18.050(A)(16), and the sketch or diagram required by Section 5.18.050(A)(17).

(Ord. 04-14 § 1 (part))

## **Chapter 5.19 TATTOO AND/OR BODY PIERCING ESTABLISHMENTS**

Sections:

[5.19.010 Purpose.](#)

[5.19.020 Definitions.](#)

[5.19.030 Tattoo and/or body piercing establishments—Special requirements.](#)

[5.19.040 Licenses required.](#)

[5.19.050 Application for tattoo and/or body piercing establishment license.](#)

[5.19.060 Issuance of a tattoo and/or body piercing establishment license.](#)

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[5.19.070 Application for tattoo and/or body piercing establishment employee license.](#)

[5.19.080 Issuance of tattoo and/or body piercing establishment employee license.](#)

[5.19.090 Fees.](#)

[5.19.100 Inspection.](#)

[5.19.110 Expiration of license—Renewal.](#)

[5.19.120 Suspension.](#)

[5.19.130 Revocation.](#)

[5.19.140 Procedures for denial, suspension, revocation of licenses—Hearing.](#)

[5.19.150 Interim licenses.](#)

[5.19.160 Transfer of license.](#)

[5.19.170 Location of tattoo and/or body piercing establishment.](#)

[5.19.250 Hours of operation.](#)

[5.19.260 Exemptions.](#)

[5.19.270 Injunction.](#)

### **5.19.010 Purpose.**

It is the purpose of this chapter to regulate tattoo and body piercing establishments in order to promote the health, safety, morals and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of tattoo and/or body piercing establishments within the town.

(Ord. 08-03 § 1 (part))

### **5.19.020 Definitions.**

In this chapter, unless the context otherwise requires:

"Piercing" means penetrating, perforating, boring or creating a hole in the skin or another human body part. This chapter does not apply to ear piercing or procedures prescribed by a health care provider licensed pursuant to Arizona Revised Statutes, Title 32.

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

"Tattoo and/or body piercing artist" or "tattoo and/or body piercing practitioner" means a person who practices tattooing, branding, scarifying or piercing as described in this chapter for a fee of any kind.

"Tattoo and/or body piercing establishment" means any place wherein branding, scarifying, tattooing or piercing is performed.

(Ord. 08-03 § 1 (part))

**5.19.030 Tattoo and/or body piercing establishments—Special requirements.**

- A. No tattoo and/or body piercing establishment license shall be issued or renewed except in conjunction with one or more tattoo and/or body piercing artist or practitioner license(s) and compliance with the following requirements:
  - 1. A readable sign, conforming to the town's sign ordinances, shall be posted at the main entrance identifying the establishment;
  - 2. Lighting and ventilation shall be provided in each room or enclosure where services are performed on patrons, in accordance with the town building code;
  - 3. Public restrooms shall be located in such a way that traffic to the restrooms does not occur in any area in which instruments are sterilized or in any area in which tattooing or body piercing is conducted;
  - 4. The establishment is in compliance with all applicable provisions of the town's fire code;
  - 5. The establishment shall have written procedures on the proper handling and sterilization of equipment and demonstrate that all personnel are trained in the procedure. All training of personnel must be updated annually;
  - 6. Establishments shall post and provide to customers upon request written instructions on tattoo and/or body piercing care;
  - 7. Establishments shall have a posted procedure, followed by all employees, wherein they are required to obtain two pieces of identification to verify the age of the customer. A log shall be retained to document this verification. The log must be available for inspection at any time by a police officer, the town clerk or the code compliance officer.
- B. No tattoo and/or body piercing establishment license shall be issued or renewed if the applicant has been convicted within the last five years of any felony or other offense involving moral turpitude.

(Ord. 08-03 § 1 (part))

**5.19.040 Licenses required.**

It is unlawful:

- A. For any person to operate a tattoo and/or body piercing establishment without a valid business license issued by the town pursuant to this title;
- B. For any person who operates a tattoo and/or body piercing establishment to employ a person to work for the tattoo and/or body piercing establishment who is not licensed as a tattoo and/or body piercing establishment employee by the town pursuant to this chapter; and
- C. For any person to obtain employment with a tattoo and/or body piercing establishment without having secured a tattoo and/or body piercing establishment employee license pursuant to this chapter.

(Ord. 08-03 § 1 (part))

**5.19.050 Application for tattoo and/or body piercing establishment license.**

- A. Any person who seeks to operate a tattoo and/or body piercing establishment within the town shall submit an application with a nonrefundable two hundred dollar (\$200.00) application fee for a tattoo and/or body piercing establishment license.
- B. An application for a license shall be made on a form provided by the town.

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- C. All applicants shall be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) to enable the town to determine whether the applicant meets the qualifications established in this chapter.
- D. If a person who wishes to operate a tattoo and/or body piercing establishment is an individual, the person shall sign the application for a license as applicant. If a person who wishes to operate a tattoo and/or body piercing establishment is other than an individual, each individual who has a twenty (20) percent or greater interest in the applicant entity shall sign the application for a license as applicant. Each applicant shall be qualified as set forth in this section and each applicant shall be considered a licensee if a license is granted.
- E. The completed application for a tattoo and/or body piercing establishment license shall contain the information and shall be accompanied by the documents set forth in this subsection or subsections (E)(1) through (E)(11). For individual applicants the information and documents shall relate to the individual. For applicants other than individuals, the information and documents shall relate to each person controlling a twenty (20) percent or greater interest in the applicant entity.
1. If the applicant is:
    - a. An individual, the individual shall:
      - i. State his or her legal name and any aliases, and
      - ii. Submit proof that he or she is at least eighteen (18) years of age;
    - b. A partnership, the partnership, through its duly authorized representative, shall:
      - i. State its complete name, and the names of all partners,
      - ii. Indicate whether the partnership is general or limited, and
      - iii. Submit a copy of the partnership agreement, if any;
    - c. A corporation or other entity, the corporation or other entity, through its duly authorized representative, shall:
      - i. State its complete name,
      - ii. Provide the date of its incorporation or organization, as applicable,
      - iii. Provide evidence that the corporation or entity is in good standing under the laws of its state of incorporation or organization, as applicable, and
      - iv. Provide the name of the registered corporate agent and the address of the registered office for service of process;
  2. If the applicant intends to operate the tattoo and/or body piercing establishment under a name other than that of the applicant; the applicant shall:
    - a. State the tattoo and/or body piercing establishment's fictitious name, and
    - b. Submit the required registration documents;
  3. Whether the applicant or any of his, her or its operators or employees of the tattoo and/or body piercing establishment have been convicted of a specified criminal activity as defined in this chapter and, if so, the specified criminal activity involved and the date, place and jurisdiction of each such occurrence;
  4. Whether the applicant or any of his, her or its operators or employees of the tattoo and/or body piercing establishment have had a previous tattoo and/or body piercing license under this chapter or other similar ordinances from another town or county denied, suspended or revoked, including the name and location of the tattoo and/or body piercing establishment for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant, the applicant's officers or employees (if applicable) have been a partner in a partnership or an officer, director or principal stockholder of a corporation

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that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the tattoo and/or body piercing establishment for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation;

5. Whether the applicant or any of its operators or employees hold any other tattoo and/or body piercing licenses under this chapter or other similar ordinances from another municipality or county and, if so, the names and locations of such other licensed businesses;
6. The location of the proposed tattoo and/or body piercing establishment, including a legal description of the property, street address and telephone number(s), if any;
7. The applicant's street address (not a post office box);
8. Two copies of passport-style color photograph of the applicant(s) taken within the last thirty (30) days and a fingerprint card obtained from an authorized agency or law enforcement agency. Any fees for the photographs or fingerprints shall be paid by the applicant;
9. The applicant's driver's license number, and/or its state or federally issued tax identification number;
10. Proof of training in blood-borne pathogens and cross-contamination;
11. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the establishment. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(Ord. 08-03 § 1 (part))

(Ord. No. 10-19, § I, 11-18-10)

### **5.19.060 Issuance of a tattoo and/or body piercing establishment license.**

- A. Within thirty (30) days after receipt of a complete tattoo and/or body piercing establishment license application, the town shall approve or deny the issuance of the license to an applicant. The town shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true (i) with respect to the individual applicant or (ii) if the applicant is an entity other than an individual, with respect to any person controlling a twenty (20) percent or greater interest in the applicant entity:
  1. An applicant is under eighteen (18) years of age;
  2. An applicant is overdue in payment to the town of taxes, fees, fines or penalties assessed against or imposed upon him or her in relation to any business;
  3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
  4. An applicant has been denied a license by the town to operate a tattoo and/or body piercing establishment within the preceding twelve (12) months or whose license to operate a tattoo and/or body piercing establishment has been revoked within the preceding twelve (12) months;
  5. An applicant has been convicted of specified criminal activity, as defined in Section 5.19.020;
  6. The premises to be used for the tattoo and/or body piercing establishment have not been approved by the Maricopa County department of environmental services, the Youngtown building department and the Youngtown planning and zoning department as being in compliance with applicable laws and ordinances;
  7. The license fee required by this chapter has not been paid; or

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8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.
- B. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the tattoo and/or body piercing establishment. All licenses shall be posted in a conspicuous place at or near the entrance to tattoo and/or body piercing establishment so that they may be easily read at any time.
- C. For existing buildings, the Youngtown building official shall complete certification that the premises is in compliance or not in compliance with the requirements of this chapter and any applicable code requirements within twenty (20) days of receipt of the application by the town. For new buildings or buildings being substantially altered for use for a tattoo and/or body piercing establishment, the certification shall be complete prior to issuance of a certificate of occupancy for the building, provided that an application for a tattoo and/or body piercing license had been submitted.

(Ord. 08-03 § 1 (part))

### **5.19.070 Application for tattoo and/or body piercing establishment employee license.**

- A. Any person who seeks to become an employee of tattoo and/or body piercing establishment within the town shall submit an application for a tattoo and/or body piercing establishment employee license with a nonrefundable application fee of two hundred dollars (\$200.00).
- B. An application for a license shall be made on a form provided by the town.
- C. All applicants shall be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints clearance card) to enable the town to determine whether the applicant meets the qualifications established in this chapter.
- D. Any applicant for a tattoo and/or body piercing establishment employee license, shall submit, on a form to be provided by the town, the following information:
  1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
  2. Age, date and place of birth;
  3. Height, weight, hair and eye color;
  4. Present residence address and telephone number;
  5. Present business address and telephone number;
  6. Date, issuing state and number of driver's license or other identification card information; and
  7. Proof that the individual is at least eighteen (18) years of age.
- E. Attached to the application form for a tattoo and/or body piercing establishment employee license as provided in this section shall be the following:
  1. Two passport-style color photographs of the applicant taken in the past thirty (30) days, measuring two inches by two inches, clearly showing the applicant's face, and the applicant's fingerprint card obtained from an authorized agency or law enforcement agency. Any fees for the photographs or fingerprints shall be paid by the applicant;
  2. Proof of training in blood-borne pathogens and cross-contamination;
  3. A statement describing whether such applicant previously operated or is seeking to operate, in this or any other county, town, state or country or has ever had a tattoo and/or body piercing establishment license, permit, or authorization denied, revoked, or suspended, within the five-year period immediately preceding the date of filing of the application. In the event of any such

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denial, revocation or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.

(Ord. 08-03 § 1 (part))

(Ord. No. 10-19, § I, 11-18-10)

### **5.19.080 Issuance of tattoo and/or body piercing establishment employee license.**

- A. Upon the filing of said application for a tattoo and/or body piercing establishment employee license, the town shall issue a temporary license to said applicant. The application shall then be referred to the appropriate town departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the town shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
  2. The applicant is under the age of eighteen (18) years;
  3. The tattoo and/or body piercing establishment employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or
  4. The applicant has had a tattoo and/or body piercing establishment employee license revoked by the town within two years of the date of the current application. If the tattoo and/or body piercing establishment employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to procedures and appeal as set forth in Sections 5.19.140, 5.19.150 and 5.19.160.
- B. A license granted pursuant to this section shall be subject to annual renewal on the anniversary of the date granted. Renewal shall be conditioned upon the written application of the applicant and a finding by the town that neither the applicant nor an employee has been convicted of any specified criminal activity or committed any act during the term of the previous license which would have been grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 5.19.090.

(Ord. 08-03 § 1 (part))

### **5.19.090 Fees.**

- A. Every application for a tattoo and/or body piercing establishment license or tattoo and/or body piercing establishment employee license under this chapter (whether for a new license or for renewal of an existing license) shall be accompanied by a nonrefundable application and investigation fee in the amount set forth on the schedule of fees adopted by the town council.
- B. In addition to the application and investigation fee required by this section, every tattoo and/or body piercing establishment or tattoo and/or body piercing establishment employee that is granted a license (new or renewal) shall pay to the town an annual nonrefundable license fee in the amount set forth on the schedule of fees adopted by the town council.
- C. All license fees shall be submitted to the town clerk. The completed application, including a receipt showing payment of the required fee, shall be submitted to the town clerk.

(Ord. 08-03 § 1 (part))

**5.19.100 Inspection.**

- A. An applicant or licensee shall permit representatives of the Youngtown police department, Maricopa County health department, Youngtown building department, the Sun City fire department or other town departments or government agencies to inspect the premises of a tattoo and/or body piercing establishment at any time it is occupied or open for business for the purpose of ensuring compliance with the law.
- B. A person who operates a tattoo and/or body piercing establishment or his or her agent or employee commits a misdemeanor if he or she refuses to permit such lawful inspection of the premises at any time it is open for business.

(Ord. 08-03 § 1 (part))

**5.19.110 Expiration of license—Renewal.**

- A. Each license shall expire on the anniversary of the date granted and may be renewed only by making a new application for such license. An application for renewal shall be made not less than thirty (30) days before the expiration date. If an application for renewal is made less than thirty (30) days before the expiration date, the expiration date of the license will not be affected and the applicant shall not operate under the terms of the license during any period of time between the expiration of the license and the issuance of a renewal.
- B. When the town denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the denial became final.

(Ord. 08-03 § 1 (part))

**5.19.120 Suspension.**

The town may suspend a license issued under this chapter if it determines that it has reasonable cause to believe that a licensee or an employee of a licensee has:

- A. Violated or is not in compliance with any section of this chapter; or
- B. Refused to allow an inspection of the tattoo and/or body piercing establishment premises as authorized by this chapter.

(Ord. 08-03 § 1 (part))

**5.19.130 Revocation.**

- A. The town shall revoke a license if a cause for suspension occurs during the twelve (12) month period after the same license has been suspended.
- B. The town shall revoke a license if it determines that:
  - 1. A licensee gave false or misleading information in the material submitted during the application process;

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2. A licensee has knowingly allowed possession, use or sale of controlled substances on the tattoo and/or body piercing establishment premises;
  3. A licensee knowingly operated the tattoo and/or body piercing establishment or worked as an employee at a tattoo and/or body piercing establishment during a period of time when the licensee's license was suspended or expired;
  4. A licensee is delinquent in payment to the town, county or state for any taxes or fees past due;
  5. Noncompliance with any licensing requirements under this chapter or zoning requirements under Title 17 of this code;
  6. Conducting a business in violation of any federal, state, county or local law;
  7. The licensee is a corporation and is no longer qualified to transact business in the state.
- C. When the town revokes a license, the revocation shall continue for not less than one year, and the licensee shall not be issued a tattoo and/or body piercing establishment license for one year from the date the revocation became effective.

(Ord. 08-03 § 1 (part))

### **5.19.140 Procedures for denial, suspension, revocation of licenses—Hearing.**

- A. Licenses issued or required under the provisions of this chapter may be denied, modified, suspended or revoked by the town clerk for the causes specified in this chapter after notice and a hearing before the town manager.
- B. Notice of a hearing with the town manager or the town manager's delegate shall be given by the town clerk, in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, certified mail, to the applicant/licensee at the address shown on the application for license at least five days prior to the date set for the hearing.
- C. The town manager shall issue a written decision and mail notice thereof within three days after the hearing, setting forth the findings and grounds for the decision, to the applicant/licensee.

(Ord. 08-03 § 1 (part))

### **5.19.150 Interim licenses.**

- A. A licensee may obtain an interim license to conduct business operations pending its appeal of town's decision to deny renewal, modify, suspend or revoke a license under this chapter, unless the revocation or suspension was court ordered. Licensee shall apply for an interim license by submitting to the town clerk a written request for an interim license, along with a copy of the notice of appeal from the town manager's decision on the licensee's appeal, and any materials required for a license but not previously provided. The town clerk will issue an interim license within one business day of receipt of the foregoing materials. No fee will be charged for an interim license. Nothing in this section requires the town to issue an interim license where the basis for denying renewal, revoking, suspending or modifying the license is the town's reasonable cause to believe that the licensee's conduct creates a danger to the health, safety and welfare of the town and its residents.
- B. If a business has been issued a license or interim license, and this chapter also requires the operator of the business to have an operator license, an operator may obtain an interim license pending the town's decision to issue a final operator license, or pending the town's decision to deny, modify, suspend or revoke the operator license, as the case may be. The interim operator license is only valid with respect to operations at the identified business, and its sole purpose is to allow such business to remain open for business.

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- C. An interim license does not constitute permission to violate laws or cause a public nuisance. A business premises may be immediately closed if it constitutes an immediate threat or danger to public health and safety or property, per applicable building, fire, health and safety regulations or as determined by the court.
- D. An interim license automatically expires upon the final decision of the town manager, except that if an action is brought in a court of competent jurisdiction and shall be surrendered to the town clerk within five days thereafter.

(Ord. 08-03 § 1 (part))

### **5.19.160 Transfer of license.**

- A. A licensee shall not transfer a license to another, nor shall a licensee operate a tattoo and/or body piercing establishment under the authority of a license at any place other than the address designated in the application.
- B. Upon the sale or transfer of any interest in a tattoo and/or body piercing establishment, the license therefore shall be null and void. A new application shall be made by any person, associations, firm or corporation desiring to own or to operate all or any portion of the establishment business. Each such transferee shall comply with the licensing requirements of this chapter.
- C. Any such sale or transfer of any interest in an existing tattoo and/or body piercing establishment or any application for enlargement or expansion of the building or other place of business of a tattoo and/or body piercing establishment shall require inspection and compliance with this chapter.

(Ord. 08-03 § 1 (part))

### **5.19.170 Location of tattoo and/or body piercing establishment.**

A tattoo and/or body piercing establishments may only be located in such locations as permitted in Title 17, Zoning.

(Ord. 08-03 § 1 (part))

### **5.19.250 Hours of operation.**

No tattoo and/or body piercing establishment shall remain open at any time between the hours of one a.m. and eight a.m. on weekdays and Saturdays, and one a.m. and noon on Sundays.

(Ord. 08-03 § 1 (part))

### **5.19.260 Exemptions.**

- A. The provisions of this chapter shall not apply to:
  - 1. Persons authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy, or acupuncture;
  - 2. Registered nurses, licensed practical nurses or technicians, when acting under the supervision of a licensed physician or osteopathy;
  - 3. Ear piercing;

4. Procedures prescribed by a health care provider licensed pursuant to Arizona Revised Statutes Title 32.
- B. Any exemption granted in this chapter is effective only insofar as and to the extent that the bona fide practice of the business or profession of the person exempted overlaps into the field comprehended by this article, and exemptions granted in this chapter are solely for those activities which are performed in the course of the bona fide practice of the business or profession of the person exempted.

(Ord. 08-03 § 1 (part))

#### **5.19.270 Injunction.**

A person who operates or causes to be operated a tattoo and/or body piercing establishment without a valid license or in violation of the location requirements of Title 17, Zoning, or any other federal, state or town ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Each day a tattoo and/or body piercing establishment so operates is a separate offense or violation.

(Ord. 08-03 § 1 (part))

### **Chapter 5.20 SCRAP METAL DEALERS**

Sections:

[5.20.010 Purpose.](#)

[5.20.020 Definitions.](#)

[5.20.030 Scrap metal dealers.](#)

#### **5.20.010 Purpose.**

The town of Youngtown recognizes that regulation of scrap metal dealers, persons, and other businesses that trade in ferrous, non-ferrous metals, and other recyclable material is appropriate. Business activities of the type described provide an opportunity for trafficking in stolen property, making it easier to conceal acts that are criminal in nature; because such businesses have the ability to anonymously purchase, receive and transfer property easily and quickly.

(Ord. No. 10-04, § I, 3-18-10)

#### **5.20.020 Definitions.**

As used in this chapter:

"Applicant" means the person owning, operating, and/or conducting the business to be licensed, including all persons having a financial interest in the business, the manager(s), or other individuals principally in charge of the operation of the business, any authorized local agent(s), and the responsible managing person designated pursuant to this chapter.

"Business records" means all records made in the ordinary transaction of business at or near the time of any purchase, trade, barter, or other transaction involving the receipt and/or disposal of both ferrous and non-ferrous metals. Business records include all transactions, including all receipts, any metal

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transport manifests, books or similar records as prescribed by Arizona Revised Statutes and this title. This definition does not include personal correspondence, tax returns or financial statements.

"Metal" includes metals that will be attracted by a magnet and non-ferrous metals that will not normally be attracted by a magnet, and includes, but is not limited to, copper, gold, brass and aluminum and all metals that are capable of being recycled.

"Law enforcement official" means a certified and sworn peace officer of any federal, state, county, tribal or municipal law enforcement agency or code enforcement officer with law enforcement powers.

"Scrap metal dealer" is a person, business or entity including all employees of the person or business entity, except automotive recyclers as defined and licensed pursuant to A.R.S. Title 28, Chapter 10, and whose primary business is the dismantling, selling or disposing of parts or accessories of motor vehicles, engaged in the business of purchasing, trading, bartering or otherwise receiving secondhand or cast-off metal of any kind, except used beverage containers, which is commonly known as scrap metal.

(Ord. No. 10-04, § I, 3-18-10)

### **5.20.030 Scrap metal dealers.**

- A. All scrap metal dealers must obtain a business license pursuant to Chapter 5.04 of this title prior to engaging in scrap metal buying or selling. The license shall be posted in a place visible to the public upon the business premises.
- B. Applicants for a scrap metal dealer's license shall provide all information required by Chapter 5.04 of this title and pay all licensing fees imposed by Chapter 5.04 of this title.
- C. No person under the age of eighteen (18) years will be licensed as a scrap metal dealer (including an employee of a scrap metal dealer).
- D. No business may be transacted until a certificate of occupancy permit is granted and the scrap metal dealers license application has been reviewed and approved by the Youngtown police department or code enforcement officials.
- E. All persons who do not have a storefront business located within the town of Youngtown must obtain a transient business license pursuant to Chapter 5.04 of this title before transacting buying or selling of scrap metal within the town of Youngtown.
- F. Every scrap metal dealer shall maintain on the premises a legible record of all business transactions, written or printed in ink and in the English language of each transaction exceeding one hundred dollars (\$100.00). These records, upon request, must be made available for inspection by law enforcement officials during normal business hours. the records shall include:
  1. The dollar amount of the transaction.
  2. A description sufficient to identify a specific metal and its weight.
  3. The date, time and place of the transaction.
  4. The name of the seller and purchaser, including the seller's address, physical description, gender, date of birth, signature and a driver's license number or other type of valid government issued identification card number. A photocopy of the above noted acceptable identification, upon which a picture of the seller appears, will meet the identification requirements of this title.
  5. The signature of the seller and the signature of the buyer.
  6. The Youngtown business license number, if any; and the transaction privilege tax number of the seller and buyer.
- G. A scrap metal dealer shall hold in its custody in the same size, shape and condition in which the non-ferrous scrap metal was received on its business premises any non-ferrous scrap metal received in a reportable transaction for ten (10) days after the date of purchase. This subsection does not apply to

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transactions with industrial accounts, other scrap metal dealers, a holder of a peddler license furnishing evidence of the license including the license number and a scrap metal transport manifest, purchases by scrap metal dealers of used beverage containers or ferrous scrap metals or transactions less than one hundred dollars (\$100.00). All written records required by this title, and entries therein, shall be retained in a book format or similar type of record, other than a computer file, at the business premises for a period of two years after making the final entry of any transaction.

- H. A scrap metal dealer shall not purchase materials for which a record is required to be kept by this title in a series of purchases under one hundred dollars (\$100.00) for the purpose of avoiding the requirements of this title.
- I. Any law enforcement official who has probable cause to believe the property purchased by a scrap metal dealer, and known to be in the dealer's possession, is stolen may place a hold on the property for a period not to exceed ninety (90) days. The hold may be given orally, or in writing. If given orally, the hold shall not be valid unless written notice is delivered by mail, by hand, or email to the scrap metal dealer within seventy-two (72) hours of the hold being placed. The notice shall contain an accurate description of the property, including type and weight if known, and the investigation case number.
  - 1. Upon receipt of the written notice, the scrap metal dealer shall tag and mark the item, indicating the law enforcement official's name and agency, and the investigation case number.
  - 2. During the hold period, the scrap metal dealer shall not release, or dispose of, the property subject to the hold.
  - 3. When a law enforcement official requires possession of the property for the purposes of the investigation, upon reasonable notice the scrap metal dealer shall produce the property at reasonable times and places or may deliver the property to a law enforcement official who is a member of the agency conducting the investigation. The official shall issue a receipt for the property to the scrap metal dealer providing the same information that identifies the property on the hold notice.
  - 4. If a scrap metal dealer believes that a hold has been wrongfully imposed, a written appeal of such hold may be filed within seven business days with the chief of police who will issue a written decision with seventy-two (72) hours of the receipt of the appeal, excluding Saturdays, Sundays and holidays. The decision from the chief of police shall constitute the town's final and binding decision regarding the hold imposed.
  - 5. A law enforcement official of the same agency shall release the hold on the property and/or return the property to the scrap metal dealer when it is no longer required for the investigation within seven days of the conclusion of the case, or sooner if possible.
  - 6. If the law enforcement official has knowledge that the property has been reported stolen, the enforcement agency shall give written notice to the victim who reported the property stolen and issue a written notification releasing the hold, advising the victim that the law neither requires or prohibits payment of a fee or any other condition in return for the surrender of the property. A copy of this notification, with the name and address of the victim deleted shall be delivered to the dealer holding the property. If no action is taken to recover the property within sixty (60) days of the issuance of the notification to the victim, the scrap dealer in possession of the property may treat the property as if it was regularly acquired in the due course of business.
- J. A scrap metal dealer who fails to maintain the records prescribed by this title, or who refuses upon demand of a peace officer to exhibit records required by this title, or who knowingly destroys or hides such records within two years after making the final entry of any transaction, or who otherwise fails to comply with this title is guilty of a class one misdemeanor.
- K. Notwithstanding any other provisions of this title, the business license of any scrap metal dealer found to be in violation of this title shall be subject to the provisions, pertaining to denial, suspension or revocation of a business license, as set forth in Chapter 5.04 of this title.

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- L. The reporting requirements of this chapter shall not apply to an organization qualified under Section 501(c) of the United States Internal Revenue Code.

(Ord. No. 10-04, § I, 3-18-10)