

## STAFF REPORT

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**Date:** February 12, 2020

**To:** Mayor and City Council

**Thru:** Sabra Newby, City Manager

**Subject:** **D.1.1. Staff Report (For Possible Action): Acceptance of the Business Impact Statement for amendments to Reno Municipal Code Title 5, entitled "Privileged Licenses, Permits and Franchises", amending Chapter 5.05, entitled "Licenses Generally", Section 5.05.008, entitled "General Requirements", by adding Massage Establishments to the list of business licenses required to obtain a Federal Bureau of Investigation (FBI) Nationwide Background check; and by adding a new Chapter 5.23, entitled "Massage Establishments," to create a Massage Establishment Privilege License, new definitions, license application and issuance process, and minimum operational regulations for massage establishments; and finding that the adoption of the proposed ordinance amendments do not impose a direct and significant economic burden upon a business, or directly restrict the formation, operation, or expansion of a business.**

**From:** Michael Chaump, Business Relations Manager

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**Summary:** The attached Business Impact Statement (Attachment A) was prepared pursuant to Nevada Revised Statutes (NRS) Sections 237.080 and 237.090 to address whether the proposed amendments to regulate Massage Establishments as a privileged activity under Reno Municipal Code (RMC) Title 5 will either: a) impose a direct and significant economic burden upon a business, or b) directly restrict the formation, operation or expansion of a business. This staff report also summarizes the content of draft ordinances and the rationale for proposed changes.

**Background:** Reno does not currently require criminal background investigations from the Federal Bureau of Investigation (FBI) prior to the approval of business licenses for Massage Establishments. Licensed Therapists complete one initial background investigation as part of the State licensing process. Some Therapists also complete background investigations every two years as part of the National certification process. Reno does not require that Massage Establishment owners be licensed as Therapists through the State or Federal processes.

**Previous Council Action:** On August 26, 2019, Council directed staff to create an ordinance amendment to regulate Massage Establishments as privilege activity under RMC Title 5, with

direction to include background checks for Massage Establishment licensees and minimum operational regulations.

**Discussion:** Consideration of this Business Impact Statement precedes and accompanies adoption of the proposed amendments to RMC, Title 5. The amendments would create a Massage Establishment Privilege License category and require background checks and other requirements for Massage Establishment licensees.

Proposed Amendments and Rationale: The draft ordinances and the associated Business Impact Statement address the following topics:

- The draft ordinances would create a Massage Establishment Privilege License Category (New Chapter 5.23)
  - The draft ordinances classify Massage Establishments as an administratively-reviewed privileged business license. This classification allows the implementation of background checks and other operational requirements, but is less time intensive than Council approved privilege licenses such as alcohol, marijuana sales, gaming, etc. This type of privilege license is not a discretionary approval, unlike the privileged licenses requiring Council approval. If an application complies with all the adopted standards, it must be approved. If it does not comply, it must be denied. Other privileged business license that are currently classified in this way include peddlers, solicitors, towing companies, booting companies, sidewalk vendors, vehicles for hire, and tobacco paraphernalia retailers (Attachment B).
- The draft ordinances would establish background check requirements for licensees (Sec.5.05.008(f) & 5.23.030)
  - The draft ordinance would require background checks (currently costing \$213.50 per person) for existing and new massage establishment owners. The purpose is to minimize the likelihood of businesses being used for illegal activities such as prostitution or human trafficking. License applications would be denied if the applicant does not pass the background check.
- Exemptions would include independent Licensed Massage Therapists with no employees and Licensed Massage Therapists who also operate a Massage Establishment business and have completed an FBI background check within the prior 24 month period (Sec.5.23.008 & Sec.5.23.030)
  - Background check requirements for Licensed Massage Therapists are not part of the proposed ordinance amendments because an initial background check for Licensed Massage Therapists is already required by the Nevada Board of

Massage Therapy and background checks are required every two years by the National Certification Board for Therapeutic Massage and Bodywork. Duplicative requirements would not add value. Instead, applicants may submit current (not more than 24 months old) background checks as part of the City licensing process. Independent Licensed Massage Therapists with no employees are also exempt.

- New operational requirements (Sec.5.23.050)
  - Operational requirements focus on the prohibition of business features that enable criminal activity and are not necessary for the operation of Massage Establishments. New standards include a number of components:
    - Requirement for the licensee or a designated manager to be on site whenever the business is open;
    - Devices capable of recording either audio or video activities would not be allowed in any treatment rooms;
    - Two-way or tinted windows would not be allowed in any treatment rooms;
    - Showers would not be allowed in treatment rooms;
    - Automatic teller machines would not be allowed in the business; and
    - Exterior windows would not be allowed to be tinted, covered, or blocked in a manner than impedes visibility into the business.
- Operations would be prohibited between the hours of 11:00 PM to 6:00 AM regardless of underlying zoning (Sec.5.23.050)
  - Overnight operations would not be allowed because typical massage businesses operate during the daytime and early evening periods and illegal activities are more common during overnight hours.
- Changes are not proposed for existing license or application fees
  - The Massage Establishment Privilege License would be an annual license based on gross receipts to determine license fees, which represent no change to fee calculations for existing licenses.
- An 18 month period would be provided for existing Massage Establishment licensees to come into compliance with the ordinance (Sec.5.23.035)
  - Existing massage establishment licensee will be given 18 month to comply with the background check requirements. This represents a reasonable, but not excessive, amount of time to comply through the license renewal process.
- Ordinances do not apply if massage therapy is ancillary to the primary business activity (Sec.5.23.007)

- The definition of a Massage Establishment excludes operations that are ancillary to a primary business activity. This would exempt medical facilities such as hospitals or care facilities performing massages as part of the medical care, or casinos providing spa services ancillary to the primary business activity. These businesses have other rigorous licensing requirements.

Public Input Process: In compliance with NRS 237.080 and 237.090, Notice of Intent to Act upon a Regulation was properly published in the Reno Gazette-Journal on November 2, 2019. Notice of the public workshop and request for comment was also posted on the City of Reno website at [www.reno.gov/businesslicense](http://www.reno.gov/businesslicense) along with copies of the proposed ordinance amendments and instructions for submitting comments.

In addition, direct mail notices of the public workshop and request for comment were sent to approximately 300 businesses likely to be affected by adoption of the proposed amendments, which included but were not limited to, licensed massage establishments, licensed massage therapists, hotel casinos with spa services and the Chamber of Commerce. Notices were also hand delivered to local Massage Establishments.

Additionally, a media advisory was sent seeking input and notifying the public of the opportunity to submit comments and review the proposed ordinances at the public workshop held on November 18, 2019.

Approximately 40 people attended the public workshop. Staff from the Business License Division, Code Enforcement, and the Nevada Board of Massage Therapy were also in attendance. Staff provided an overview of the proposed changes, answered general questions, and received suggested changes to the amendments at the public workshop. The Business License Division also received five written comments via email.

There were approximately 31 independent Licensed Massage Therapists and nine Massage Establishment operators in attendance at the public workshop. The majority of the questions and comments received were from independent Therapists seeking clarification of who is affected by the proposed amendments. Points of concern included:

- Clear definitions for Massage Establishments and Independent Massage Therapist;
- Opposition to requiring background checks for all and not providing an exemption for Therapists certified by the National Certification Board for Therapeutic Massage and Bodywork, which requires bi-annual background checks;
- Cost of the privilege license and background check;
- A desire to reduce the proposed compliance deadline to 18 months; and

- Requiring new inspections in addition to the annual inspections already required to maintain State licenses.

In response to the concerns and suggested changes to the proposed ordinance expressed in the public workshop, staff made the following edits to reduce impacts:

- Create an exemption from the background check for those certified by the national organization (RMC Sec.5.23.030);
- Reduce the compliance deadline to 18 months for existing businesses (RMC Sec.5.23.035);
- No new inspections will be required by the City of Reno in addition to the annual inspections already required by the State;
- Not increasing fees for Massage Establishment Privilege Licenses;
- Create a background check exemption for Licensed Therapists who also operate a Massage Establishment (RMC Sec.5.23.008); and
- Revise definitions of Massage Establishments and Independent Massage Therapist.

The intention of the proposed ordinance amendments are to adopt regulations that protect the health, safety and welfare of the public and to make massage establishment owners accountable for the business conducted within their establishments without placing a significant burden, or restrict the formation, operation, or expansion of a business. The new requirements will also minimize the likelihood of businesses being used for illegal activities such as prostitution or human trafficking,

The Business Impact Statement was prepared, certified, and made available for public inspection with the City Clerk prior to this first reading pursuant to NRS 237.090.

**Financial Implications:** None at this time.

**Legal Implications:** Legal review completed for compliance with City procedures and Nevada law.

**Recommendation:** Staff recommends Council accept the Business Impact Statement and enter a finding that the Business Impact Statement was prepared in compliance with NRS 237.080 and 237.090 and the proposed ordinance amendments do not impose a direct and significant economic burden upon a business, or directly restrict the formation, operation, or expansion of a business.

**Proposed Motion:** I move to approve the staff recommendation.

**Attachments:**

- Attachment A - Business Impact Statement\_Title 5 Massage Establishments (PDF)
- Attachment B - Privilege License Types (PDF)