

ORDINANCE

AN ORDINANCE AMENDING CHAPTER 5.72 “REGULATION OF MASSAGE” OF THE MANITOU SPRINGS MUNICIPAL CODE CONCERNING THE LICENSING OF MASSAGE PARLORS

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WHEREAS, C.R.S. § 12-48.5-101, *et seq.*, governs the licensing of massage parlors and it grants municipalities the authority to enact ordinances that further regulate massage parlors; and

WHEREAS, to be consistent with state law and to further regulate massage parlors in the City of Manitou Springs, the City Council of the City of Manitou Springs has determined to make conforming changes to Chapter 5.72 “Regulation of Massage” of the Manitou Springs Municipal Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:

**Section 1:** Chapter 5.72 of the Manitou Springs Municipal Code is hereby repealed and reenacted to read as follows:

CHAPTER 5.72

Regulation of Massage Parlors

**5.72.010 Purpose.**

This chapter is enacted for the purpose of promoting the health, safety, and welfare of the citizens of the City by regulating and licensing massage parlors.

**5.72.020 Definitions.**

As used in this chapter, unless the context otherwise requires, the following words and terms shall be defined as follows:

*License* means a grant a license to operate a massage parlor.

*Licensed premises* means the premises specified in an approved application for a license under this chapter which are owned or in the possession of the licensee and within which such licensee is authorized to carry on the practice of massage.

*Licensing authority* or *authority* means the City Council of Manitou Springs, designated to act as the massage parlor licensing authority of the City.

*Location* means a particular parcel of land that may be identified by an address or by other descriptive means.

*Massage* means a method of treating the body of another for medical, remedial or hygienic purposes, including but not limited to rubbing, stroking, kneading, or tapping

with the hand or an instrument or both, and for purposes of this chapter, massage shall include any services which are offered or performed for compensation, which are advertised or represented as massage, or which involve the touching of the body with the purpose of inducing any type of pleasurable experience by a person who is not licensed as a massage therapist.

*Massage parlor* means an establishment providing massage, but it does not include training rooms of public or private schools accredited by the state board of education or approved by the division charged with the responsibility of approving private occupational schools, training rooms of recognized professional or amateur athletic teams, or licensed health care facilities. A facility which is operated for the purpose of massage therapy performed by a massage therapist is not a massage parlor. For purposes of this subsection, *massage therapist* means a person who was graduated from a massage therapy school accredited by the state educational board or division charged with the responsibility of approving private occupational schools, or from a school with comparable approval or accreditation from another state with transcripts indicating completion of at least five hundred (500) hours of training in massage therapy. For purposes of this subsection, a massage therapy school may include an equivalency program approved by the state educational board or division charged with the responsibility of approving private occupational schools.

*Person* means a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer, or employee of any of them.

*Premises* means a distinct and definite location which may include a building, a part of a building, a room, or any other definite area contiguous thereto.

#### **5.72.030      Licensing authority established.**

A.      There is established a massage parlor licensing authority, which shall have and is vested with the authority to grant or refuse licenses for massage parlors based upon the criteria set forth herein and state law, to conduct investigations, and to suspend or revoke such licenses for cause in the manner provided by this chapter.

B.      The massage parlor licensing authority shall be the City of Manitou Springs City Council.

C.      The City Clerk shall receive all applications for licenses and shall issue all licenses granted by the authority, upon receipt of all fees as are required by this chapter. All public notices required by this chapter shall be accomplished by the City Clerk. The Chief of Police or the Chief of Police's designee shall be the massage parlor inspector, who shall perform routine periodic inspections of the licensed premises and such other duties as the massage parlor licensing authority may reasonably direct.

#### **5.72.040      License required-display.**

A.      It is unlawful for any person to operate a massage parlor within the City unless such person shall have first obtained a massage parlor license from the City.

B. Such license shall be prominently displayed at all times upon the premises for which the license was issued.

**5.72.050 Application fee.**

Each applicant, whether an individual, partnership, or corporation, shall pay an application fee of one hundred fifty dollars (\$150.00) at the time of filing an application. Such application fee shall be nonrefundable.

**5.72.060 License application.**

A. Applications for a license under the provisions of this chapter shall be on forms prepared and furnished by the City Clerk which shall set forth such information as the licensing authority requires to enable the authority to determine whether a license should be granted. Each individual applicant, partner of a partnership, officer, director, and holder of over ten percent (10%) of the corporate stock of the corporate applicant, and all managers shall be named in each application form, and each of them shall be photographed and fingerprinted by the Manitou Springs Police Department. Each individual applicant, partnership, and corporate applicant shall also furnish evidence from the City Planning Department, Building Department, and Public Works Department that the proposed establishment meets the requirements of the City of Manitou Springs zoning ordinances, proof of the applicant's right to possession of the premises, complete plans and specifications for the premises, a financial questionnaire, a background investigation report, and consent to release financial information and any other information necessary to complete the investigation of the applicant. Each corporate applicant shall furnish evidence that it is in good standing under the statutes of the State of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado.

B. The City Clerk shall not accept any application that is not complete in every detail. If an omission or error is discovered by the City Clerk, the application shall be rejected and returned to the applicant for completion or correction without further action by the City Clerk. For purposes of this chapter, the date the City Clerk accepts an application which is complete in every detail shall be the filing date.

C. The boundaries of the neighborhood to be considered pursuant to section 5.72.090(B) of this chapter in determining whether or not to grant said license shall be the entire City of Manitou Springs.

D. Any massage parlor existing as of the effective date of this Ordinance shall file a license application as set forth herein within sixty (60) days of the effective date. Any such massage parlor existing as of the effective date of this Ordinance shall be subject to closure by appropriate enforcement action of the City pursuant to section 5.72.210 if a license has not been successfully obtained within one hundred and eighty (180) days of the effective date of this Ordinance. Any application for a massage parlor business license pending as of the effective date of this Ordinance shall be subject to the requirements of this Chapter.

**5.72.070 Public notice; Posting and publication.**

A. Upon receipt of a complete application, except an application for renewal or for transfer of ownership, the licensing authority shall schedule a public hearing upon the application not less than thirty (30) days after the filing date of the application and shall post and publish the public notice thereof not less than ten (10) days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation in the City.

B. Notice given by posting shall include a sign of suitable material, stating the type of license applied for, the date of the application, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and, if the applicant is a corporation, association, or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary, and manager.

C. Notice given by publication shall contain the same information as that required for signs.

D. Any sign posted as required in subsections (A) and (B) of this section shall be placed so as to be conspicuous and plainly visible to the general public.

E. At the public hearing held pursuant to this section, any party in interest shall be allowed to present evidence and cross-examine witnesses. As used in this chapter, party in interest includes the applicant, a resident of the neighborhood under consideration, or the owner or manager of a business located in the neighborhood under consideration.

F. The licensing authority, in its discretion, may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.

**5.72.080. Investigation.**

A. When a complete application has been accepted for filing, the required individuals have been fingerprinted and photographed, and the license fee has been paid, the City Clerk shall transmit the application to the Manitou Springs Police Department for investigation of the background and financial interest of each individual applicant, each partner holding over ten (10%) percent interest of a partnership, each officer, director, and holder of over ten percent of the stock of a corporation of a proposed massage parlor establishment. The Police Department shall also investigate the source of funds for the business. Each applicant shall pay a nonrefundable investigation fee at the time the application is filed in the amount then charged by the Colorado Department of Public Safety for each person who will be investigated.

B. The investigation conducted by the Manitou Springs Police Department shall be sufficient to verify the accuracy of all the information submitted as part of the application.

1. The Manitou Springs Police Department shall make a recommendation to the licensing authority to approve or deny the license based on its

investigation. In investigating the qualifications of any applicant, licensee, or employee or agent of the licensee or applicant, the licensing authority may have access to criminal history record information furnished by criminal justice agencies subject to any restrictions imposed by such agencies. In the event the licensing authority takes into consideration information concerning the applicants criminal history record, the licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of his application for a license.

2. As used in this subsection (B), *criminal justice agency* means any federal, state, or municipal court or any governmental agency or subunit of such agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

C. No application for a massage parlor license at a particular location by or on behalf of the same person shall be received or acted upon concerning a location for which, within two (2) years preceding, the local licensing authority has refused to approve a license on the ground, in whole or in part, that the licenses already granted for the particular locality were adequate for the reasonable requirements of the neighborhood and the desires of the inhabitants at the time of such refusal.

**5.72.090 Results of investigation; Decision of authority; Change of financial interest.**

A. Not less than five (5) days prior to the date of the hearing, the City shall make known its findings based upon its investigation, in writing, to the applicant and other interested parties. The licensing authority has authority to refuse to issue any license, subject to judicial review.

B. Before entering any decision approving or denying the application, the licensing authority shall consider, except where this chapter specifically provides otherwise, the facts and evidence produced as a result of the investigation, including the reasonable requirements of the neighborhood for the license for which application has been made, the desires of the inhabitants, the number, type, and availability of other massage parlors located in or near the neighborhood under consideration, and any other pertinent matters affecting qualifications of the applicant for the conduct of the business proposed.

C. Any decision of a licensing authority approving or denying an application shall be in writing stating the reasons therefore and shall be made within thirty (30) days after the date of the public hearing, and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application.

D. No license shall be issued by the licensing authority after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply

with the provisions of this chapter, and then only after inspection of the premises has been made by the licensing authority to determine that the applicant has complied with the plans and specifications submitted upon application. If the building has not been constructed or placed in operation within one (1) year after approval of the license application or construction of the building has not been commenced within one (1) year after such approval, the licensing authority, in its discretion, may revoke or elect not to renew the license.

E. Any change in the partners holding over ten percent (10%) in interest of a partnership or in the officers, directors, or holders of over ten percent (10%) of the stock of a corporate licensee holding a massage parlor license shall result in termination of the license of the partnership or corporation, unless such licensee within thirty (30) days after such change files a written notice of such change with the City Clerk on forms provided by the City Clerk, together with the required fees, fingerprints, and photographs. The Manitou Springs Police Department shall thereafter conduct an investigation and make a recommendation as set out in section 5.72.080.

F. Each license issued under this chapter is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he holds. A separate license shall be issued for each specific business or business entity and each geographical location.

#### **5.72.100 Renewals.**

Application for the renewal of an existing license shall be made to the licensing authority not less than forty-five (45) days prior to the date of expiration. The licensing authority may cause a hearing on the application or renewal to be held. No such renewal hearing shall be held by the licensing authority until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten (10) days and notice of the hearing has been provided the applicant at least ten (10) days prior to the hearing. The licensing authority, in its discretion, may revoke or elect not to renew a license if it determines that the licensed premises have been inactive for at least three (3) months. The licensing authority may also refuse to renew any license for good cause, subject to judicial review.

#### **5.72.110 Transfer of ownership.**

A. Application shall be made to the licensing authority prior to any transfer of ownership on forms prepared and furnished by the licensing authority. In determining whether to permit a transfer of ownership, the licensing authority shall consider the requirements of section 5.72.160. The licensing authority may cause a hearing on the application for transfer of ownership to be held. No such hearing shall be held by the licensing authority until the notice of hearing has been conspicuously posted on the licensed premises for a period of ten (10) days and written notice of the hearing has been provided the applicant at least ten (10) days prior to the hearing.

B. When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license.

**5.72.120 Location of massage parlors.**

A. It is unlawful to operate or cause to be operated a massage parlor which is in violation of the Manitou Springs zoning ordinances.

B. No changes of location for a licensed massage parlor shall be allowed.

**5.72.130 License term; Fees.**

A. All licenses granted pursuant to this chapter shall be for a term of one year. Said term shall commence on the date the license is issued or renewed.

B. The license fee for a new license shall be determined by resolution of the City Council. The annual license renewal fee shall also be determined by resolution of the City Council.

C. In the event of a suspension, revocation, or cessation of business, no portion of the license fee shall be refunded.

**5.72.140 Identity cards.**

A. Every applicant, licensee, agent or employee of said applicant or licensee who administers massages shall, prior to commencing work in or upon the licensed premises, obtain an identity card from the City Clerk and shall carry said identity card at all times while in or upon the licensed premises.

B. The identity card shall include the location of the massage parlor, the name, signature, and photograph of the individual. A fee of fifty dollars (\$50.00) shall be charged for each card, said fee to be collected by the City Clerk and used to defray the expenses of providing such identity cards. A separate identity card shall be required for each person for each place of employment.

C. Each applicant for an identity card shall be photographed and fingerprinted by the Police Department and must submit an application form, background investigation report, a copy of a valid picture driver's license or other form of acceptable picture identification, and the required identity card and investigation fees to the City Clerk. Upon receipt of a properly completed application form, acceptable form of identification, and fee, the City Clerk shall transmit the application to the Manitou Springs Police Department for investigation of the applicant's background. The City Clerk shall reject any application that is not complete in every detail.

D. Within forty-five (45) days after filing of a properly completed application for an identity card, the City Clerk will either issue the requested identity card or notify the applicant that the Police Department has recommended denial of the identity card. The Police Department may request a reasonable extension of time from the City Clerk if such extension of time is necessary in order to complete its investigation. Notice of denial of an identity card setting out the grounds for denial shall be sent by certified mail to the applicant at the address provided by the applicant. The grounds for denial shall be those set out in this section and section 5.72.160 herein. In

the event of a denial, an applicant shall have the right to a hearing before the licensing authority as set forth in section 5.72.150.

E. Should any identity card be lost, stolen, or otherwise missing, the person to whom the identity card was issued shall report the missing card to the City Clerk within forty-eight (48) hours of discovery that the identity card is missing. Replacement identity cards shall be issued within five (5) business days of receipt of an application for a replacement identity card. The fee for a replacement card shall be ten dollars (\$10.00).

**5.72.150 Suspension; Revocation; Denial of identity card; Hearings.**

A. The licensing authority may suspend or revoke any license granted pursuant to this chapter upon a finding of the following:

1. That repeated disturbances of the public peace involving patrons, agents or employees, or the licensee of the establishment have occurred within the licensed establishment or upon any parking areas, sidewalks, access ways or grounds within the neighborhood of the licensed establishment;
2. That the licensee or any agents or employees thereof are illegally offering for sale or illegally allowing to be sold or consumed upon the licensed premises, or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises, narcotics or dangerous drugs, fermented malt beverages, or malt, vinous or spirituous beverages;
3. That the licensee or any agents or employees thereof permitted patrons to engage in indecent, obscene or immoral conduct as prohibited by Manitou Springs Municipal Code section 9.12.010, *et seq.*, or upon any parking areas, sidewalks, access ways, or grounds immediately adjacent to the licensed establishment, when the licensee or agent or employee knew or should have known such displays or acts were taking place;
4. That the licensee made a false statement or gave false information in connection with an application for or renewal of a massage parlor license;
5. That the licensee violated or permitted a violation of any provisions of this chapter.

B. Nothing in this chapter shall prohibit the City from taking any other enforcement action provided for by the Manitou Springs Municipal Code, the laws of the state of Colorado, or of the United States.

C. A licensee shall be entitled to a hearing before the licensing authority if the City Administrator files a written complaint with the licensing authority seeking to suspend or revoke a license.

1. When there is probable cause to believe that a licensee has committed or has allowed to be committed acts which are grounds for suspension or revocation under this chapter, the City Administrator may file a written complaint with the licensing authority setting forth the circumstances of such acts.



2. The licensing authority shall provide a copy of the complaint to the licensee, together with notice to appear before the licensing authority or his or her designee for the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked.
3. At the hearing referred to above, the licensing authority shall hear and consider relevant evidence from any witness. Evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and in explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed the violation charged, evidence and statements in aggravation of the offense shall also be permitted. The licensing authority shall make findings of fact from the evidence as to whether a violation has occurred. If the licensing authority determines that a violation did occur, it shall issue an order within thirty (30) days after the hearing suspending or revoking the licensee's license based on its findings of facts. No suspension shall be for a longer period than six (6) months. A copy of the findings and order shall be mailed to or served on the licensee at the address on the license.
4. The order of the licensing authority made pursuant to subsection (C)(3) above shall be a final decision and may be appealed to the El Paso County District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). Failure of a licensee to appeal said order in a timely manner shall constitute a waiver of any right a licensee may otherwise have to contest the suspension or revocation of his license.
5. The licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing which the licensing authority conducts. It is unlawful for any person to fail to comply with any subpoena issued by the licensing authority.
6. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the state of Colorado. Upon failure of any witness to comply with such subpoena, the City Attorney shall:
  - i. Petition the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court; or
  - ii. Petition the District Court in and for El Paso County, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the

petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court.

D. All hearings held before the licensing authority under this chapter shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the City Clerk, and shall pay all costs of preparing such record.

**5.72.160 Persons prohibited as licensees.**

No license provided by this chapter shall be issued to or held by:

A. Any corporation, any of whose officers, directors, or stockholders holding more than ten percent (10%) of the stock thereof are not of good moral character;

B. Any partnership, association, or company, any of whose officers, or any of whose members holding more than ten percent (10%) interest therein, are not of good moral character;

C. Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the licensing authority;

D. Any sheriff, deputy sheriff, police officer, or prosecuting officer or any of the licensing authority's inspectors or employees.

**5.72.170 Unlawful acts.**

A. It is unlawful for any person:

1. To operate a massage parlor anywhere within the City without holding a valid Manitou Springs massage parlor license;
2. To work in or upon the licensed premises of a massage parlor administering massages without obtaining and displaying a valid identity card pursuant to section 5.72.140 of this chapter;
3. To be in or upon the premises of a massage parlor or to obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when such person is under eighteen (18) years of age, unless such person is accompanied by his parent or legal guardian, or has a physician's prescription for such massage services;
4. To allow the sale, giving, or procuring of any massage services to any person under the age of eighteen (18) years, unless such person is accompanied by his parent or legal guardian, or has a physician's prescription for such massage services;

5. To employ any person under the age of eighteen (18) years in a massage parlor; however, if any person who is not eighteen (18) years of age exhibits a fraudulent proof of age that he is eighteen (18) years of age or older, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this chapter for violation of subsection (A)(3) through (5) of this section, unless the person inspecting such proof of age knew or should have known that it was fraudulent;
6. To fail to display at all times in a prominent place on the licensed premises a printed card with a minimum height of fourteen (14) inches and a width of eleven (11) inches with each letter a minimum of one-half inch in height, which shall read as follows:

**WARNING**

**IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME UNLESS HE IS ACCOMPANIED BY HIS PARENT OR LEGAL GUARDIAN, OR HAS A PHYSICIAN'S PRESCRIPTION FOR SUCH MASSAGE SERVICES.**

**IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE IS ACCOMPANIED BY HIS PARENT OR LEGAL GUARDIAN, OR HAS A PHYSICIAN'S PRESCRIPTION FOR SUCH MASSAGE SERVICES.**

**FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER THE MANITOU SPRINGS MUNICIPAL CODE AND ARTICLE 48.5 OF TITLE 12, COLORADO REVISED STATUTES.**

7. To permit any narcotics or dangerous drugs on the licensed premises;
8. To permit any fermented malt beverages, or malt, vinous, or spirituous liquors on the licensed premises;
9. To administer a massage or permit any massage to be administered to a patron whose genitals, anus, or female breasts are exposed during the massage treatment; and no patron of a massage parlor shall knowingly expose his or her genitals, anus, or female breasts during a massage;
10. To intentionally touch or permit any other person to touch the genitals, anus, or female breasts of any other person while on the licensed premises;
11. To engage in, encourage, or request, or to permit any person to engage in, encourage, or request acts of masturbation while on the licensed premises;
12. To fail to have exterior windows (without shades) of sufficient size to permit observation of the inside of the premises by a law enforcement officer standing outside of the premises; and

13. To interfere with or refuse to permit any inspection of the licensed premises by the Manitou Springs Police Department or agent of the City.

B. No massage parlor shall be open for business between the hours of ten p.m. (10:00 p.m.) and eight a.m. (8:00 a.m.).

**5.72.180 Employee apparel.**

All employees shall wear clothing that covers the pubic area, perineum, buttocks, cleft of the buttocks, and entire chest to four inches below the collar bone and legs not exposed more than six inches above the knees. No transparent clothing shall be permitted.

**5.72.190 Right of entry.**

The application for a massage parlor license shall constitute consent of the licensee and his or her agents or employees to permit the Manitou Springs Police Department or any other agent of the City to conduct routine inspections of any licensed massage parlor during the hours the establishment is conducting business and at other times during which activity on the premises is in evidence.

**5.72.200 Exemptions.**

The following classes of persons and establishments are exempted from this ordinance:

A. Physicians, osteopaths, physical therapists, chiropodists, chiropractors or podiatrists licensed or registered to practice in this state while performing such services in the practice of their respective professions;

B. Registered nurses and licensed practical nurses that are licensed to practice in this state while performing such services in their usual nursing duties;

C. Barbers and cosmetologists duly licensed under the laws of this state in the course of practice of their usual and ordinary licensed vocation and profession, as defined in C.R.S. § 12-8-101, *et seq.*, as the same may be amended;

D. Hospitals, clinics, nursing and convalescent homes and other similar institutions dedicated to medical or nursing practices licensed under the laws of this state where massage and baths may be given;

E. Massage practiced in an institution of learning established for such instruction under C.R.S. § 12-35.5-101, *et seq.*, as the same may be amended;

F. Training rooms of public and private schools accredited by the State Board of Education or approved by the State Board for Community Colleges and Occupational Education, and training rooms of recognized professional or amateur athletic teams;

G. Health care facilities licensed by the State of Colorado, and not specified in this chapter; and

H. Massage therapists as defined in section 5.72.020 of this chapter.

**5.72.210 Penalty.**

A. Violations of this chapter are punishable as provided in Section 1.01.100 of this code. Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation shall be considered as a separate offense.

B. Nothing herein contained shall prevent or restrict the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

C. All remedies and penalties provided for in this section shall be cumulative and independently available to the City, and the City shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

D. The penalties provided in this section shall not be affected by the penalties provided in any other section of this chapter but shall be construed to be an addition to any other penalties.

**Section 2:** If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

**Section 3:** The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

**Section 4:** This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

**Section 5:** This ordinance shall take effect five (5) days after final approval and adoption on second reading.

Passed on First Reading and Ordered Published this 3rd day of September 2013.

/s/ Donna Kast  
City Clerk

A Public Hearing will be held at the September 17, 2013 City Council meeting. The Council Meeting will be held at 7:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published September 5, 2013 (in full)  
*City's Official Website and City Hall*

Passed on Second Reading and Ordered Published this 17th day of September 2013.

Approved: /s/ Marc A. Snyder  
Mayor and City Council

Attest: /s/ Donna Kast  
City Clerk

Published September 19, 2013 (in full)  
*City's Official Website and City Hall*