

ORDINANCE NO. 22- ____

AN ORDINANCE ADOPTING A NEW PART 1 (MASSAGE BUSINESSES) OF ARTICLE 3 (SALES OF GOODS AND SERVICES) OF CHAPTER 2 (BUSINESS LICENSING, LIQUOR REGULATIONS AND TAXATION) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO MASSAGE BUSINESS LICENSES AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

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

Section 1. A new Part 1 (Massage Businesses) of Article 3 (Sales of Goods and Services) of Chapter 2 (Business Licensing, Liquor Regulations and Taxation) of the Code of the City of Colorado Springs 2001, as amended, is adopted to read as follows:

PART 1: MASSAGE BUSINESSES

- 2.3.101 DEFINITIONS**
- 2.3.102 MASSAGE BUSINESS LICENSE REQUIRED; TRANSFERABILITY**
- 2.3.103 APPLICATION REQUIREMENTS; BACKGROUND CHECKS**
- 2.3.104 FEES AND TERM**
- 2.3.105 EXEMPTIONS**
- 2.3.106 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**
- 2.3.107 UNLAWFUL ACTS; VIOLATIONS**
- 2.3.108 RECORDS; INSPECTIONS**
- 2.3.109 NOTICE OF UNLICENSED MASSAGE BUSINESS**

2.3.101: DEFINITIONS:

ADVERTISE: means to publish, display, or disseminate information and includes, but is not limited to, the issuance of any card, sign, or direct mail, or causing or permitting any sign or marking on or in any building or structure or in any newspaper, magazine, or directory, or any announcement or display via any televised, computerized, electronic, or telephonic networks or media, including advertising through internet sites, online bulletin boards or internet forums.

EQUITY HOLDER: any natural person who is a shareholder, partner, member, trustee, or other principal owner of the massage business, who owns ten percent (10%) or greater financial interest in the massage business, whether directly or through any number of holding entities, partnerships, or trusts.

MASSAGE: a system of structured touch, palpation, or movement of the soft tissue of another person's body in order to enhance or restore the general health and well-being of the recipient. Such system includes, but is not limited to, techniques such as effleurage, commonly called stroking or gliding; petrissage, commonly called kneading; tapotement or percussion; friction; vibration; compression; passive and active stretching within the normal anatomical range of movement; hydro massage; and thermal massage.

Such techniques may be applied with or without the aid of lubricants, salt, or herbal preparations, water, heat, or a massage device that mimics or enhances the actions possible by human hands.

MASSAGE BUSINESS: a business that offers massage in exchange for any form of consideration except as provided in section 2.3.105.

MASSAGE THERAPIST: Any person who administers or offers to administer to another person, for any form of consideration or hire, a massage.

SPECIFIED ANATOMICAL AREAS:

- A. Less than completely and opaquely covered: human genitals, pubic region, buttocks, and breast below a point above the top of the areola.
- B. Human male genitals in a discernible turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES: Acts, simulated acts, exhibitions, representations, depictions, or descriptions of:

- A. Human genitals in a state of sexual stimulation or arousal.
- B. Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast.
- C. Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body or into the body of an animal.
- D. Cunnilingus, fellatio, anilingus, masturbation, bestiality, or lewd exhibition of genitals or an excretory function.
- E. Flagellation, mutilation, or torture for purposes of sexual arousal, gratification, or abuse.

2.3.102: MESSAGE BUSINESS LICENSE REQUIRED; TRANSFERABILITY:

- A. On or after September 1, 2022, it shall be unlawful for any person to operate a massage business without possessing a valid massage business license for each premises where the massage business operates.
- B. Each massage business license shall specify the name under which the licensee is to operate, the address of the principal place of business, the expiration date, the number of the license, and any other information the City Clerk deems necessary.
- C. The massage business shall display the license in a conspicuous place readily visible to persons entering the licensed premises.

2.3.103: APPLICATION REQUIREMENTS; BACKGROUND CHECKS:

- A. In addition to the requirements set forth in article 1, part 4 of this chapter, the application for a massage business license shall include:
 - 1. The full name and any other names under which each equity holder of the applicant is or has been known and the residence address, telephone number, and date of birth of each equity holder of the applicant;
 - 2. A description of the specific types of services to be rendered;
 - 3. Documentary evidence that the officers, equity holders, and managers of the applicant are at least a minimum of eighteen (18) years old;
 - 4. Documentary evidence that the applicant has or will have possession of the premises to be licensed during the term of the license by ownership, lease, rental, or other arrangement;
 - 5. A statement identifying the zone district of the premises; and
 - 6. A detailed diagram showing the configuration of the premises to be licensed as follows:
 - a. The diagram shall be no larger than eight and one-half inches by eleven inches (8¹/₂" x 11");
 - b. The diagram shall include the dimensions and total square footage of the premises to be licensed but does not need to be drawn to scale;
 - c. The diagram shall designate the use of each room or other definitive area of the premises to be licensed;
 - d. The diagram shall show the type of control of the exterior areas of the premises to be licensed, including, without limitation, fences, walls, and entry/exit points;
 - e. If the premises to be licensed consists of multiple levels, a separate diagram shall be filed for each floor; and

- f. The premises to be licensed shall be outlined in bold.

The Licensing Officer may waive the site diagram for renewal applications if the applicant adopts a diagram that was previously submitted, certifies that the configuration of the premises has not been altered since it was prepared and that the use of any area or room in the premises has not changed.

- B. Each principal, managing agent, and equity holder shall meet the general standards and qualifications for an applicant as set forth in section 2.1.401.

C. Each applicant's, principal's, managing agent's, and equity holder's criminal history, any conviction or guilty plea to a charge based upon acts of dishonesty, fraud, deceit, violence, weapons, substance abuse or narcotics, sexual misconduct or prostitution related misconduct of any kind, regardless of the jurisdiction in which the act was committed, may be considered in a decision to grant, renew, revoke, or suspend the license.

D. In the event the Licensing Officer takes into consideration information concerning the applicant's, principal's, managing agent's, and equity holder's criminal history record, the Licensing Officer shall also consider any information provided by the applicant or licensee regarding the criminal history record, including, but not limited to, evidence of mitigating factors, 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 the application for a license or renewal.

2.3.104: FEES AND TERM:

Fees shall be as established by City Council under article 1, part 5 of this chapter. Fees shall not be refundable for any reason. All massage business licenses shall expire one (1) year from the date of issuance.

2.3.105: EXEMPTIONS:

The licensing requirements of this article do not apply to:

- A. Public and private schools accredited by the state board of education or approved by the state division of private occupational schools;

- B. Facilities providing massage services by employees of any governmental entity;

C. Training rooms of a recognized professional or amateur sports organization, dance troupe, bona fide athletic club, or other such athletic organization. For purposes of this subsection, a bona fide athletic club is an athletic club that receives ten percent (10%) or less of its gross income from providing massages to its members or the public;

D. Offices, clinics, and other facilities at which health care professionals licensed or registered with any state provide massage services to the public in the ordinary course of their health care profession;

E. Barber shops, beauty salons, and other facilities at which barbers and cosmetologists licensed by the state provide massage services to the public in the ordinary course of their professions;

F. A place of business where a person offers to perform or performs massage for not more than 72 hours in any six-month period and the massage is part of a public or charity event;

G. A self-employed massage therapist operating out of the massage therapist's home or the client's home;

H. A spa or resort operated on the premises of a hotel with at least one hundred (100) rooms for overnight guests; or

I. A place of business which employs individuals who do not claim expressly or implicitly to be massage therapists and provides:

1. Practices using reflexology, auricular therapy, and meridian therapies that affect the reflexes of the body;

2. Practices using touch, words, and directed movements to deepen a person's awareness of movement patterns in his or her body, such as the Feldenkrais method, the Trager approach, and body-mind centering;

3. Practices using touch or healing touch to affect the human energy systems, such as reiki, shiatsu, and meridians;

4. Structural integration practices such as Rolfing and Hellerwork; and

5. The process of muscle activation techniques.

2.3.106: DENIAL, SUSPENSION, OR REVOCATION OF LICENSE:

A. In addition to the grounds set forth in article 1 of this chapter, a massage business license may be denied, suspended, or revoked if the applicant, or a managing agent, principal, or equity holder of the applicant:

1. Has made a willful misrepresentation in applying for and obtaining a license;

2. Has been previously denied a license under this part or has had a license issued under this part suspended or revoked;

3. Has had a massage business license/permit revoked or suspended in another jurisdiction;
4. Applicant's operation of a massage business would be a threat to the public health or safety;
5. Has violated any provision of this part or any other applicable law;
6. Has failed within the required timeframe to remit payment to the City for any fees incurred pursuant to this Code;
7. Has been convicted of operating without a license under this part or performing any act for which a license is required under this part; or
8. Has violated any of the provisions of this General Licensing Code.

B. The suspension or revocation of a massage business license shall be subject to the provisions of section 2.1.801, *et seq.*, of this Chapter.

2.3.107: UNLAWFUL ACTS; VIOLATIONS:

A. It shall be unlawful for any person to:

1. Directly or indirectly, personally or through an agent or employee, conduct any massage business, or to use in connection with the massage business any premises, in whole or in part, without possessing a valid massage business license for each premises where the massage business operates.
2. Make a willful misrepresentation in applying for or obtaining a massage business license.
3. Flee, attempt to flee, or elude inspection pursuant to this part.

B. It shall be unlawful for any principal or managing agent of a massage business to:

1. Employ any person as a massage therapist or to allow any person to work as a massage therapist in a massage business who does not possess both a valid government-issued, photographic identity card and a massage therapist license.
2. Encourage, permit, or tolerate any massage therapist to engage in specified sexual activities or to expose the massage therapist's specified anatomical areas within the premises.
3. Fail to keep records as required by this part or fail to permit inspection of records as required by this part.

4. Fail to immediately report to law enforcement any specified sexual activities occurring in a massage business.

5. Permit the massage business premises to be used for living or sleeping quarters for any person when not otherwise permitted by this Code.

C. It shall be unlawful for any massage business to advertise specified sexual activities, prostitution, escort services, or other sexual services or to employ language in the text of any advertising or any images that would reasonably suggest to a prospective client that any specified sexual activities are available through the massage business or at the licensed premises.

D. It shall be unlawful for any massage business to operate between the hours of eleven o'clock (11:00) P.M. and five o'clock (5:00) A.M., inclusive.

E. Each principal, managing agent, and equity holder shall not violate, or permit to be violated, any local, State, or Federal law based on acts of dishonesty, fraud, deceit, violence, weapons, substance abuse or narcotics, sexual misconduct, or prostitution related misconduct of any kind, whether or not the acts were committed in the State of Colorado.

2.3.108: RECORDS; INSPECTIONS:

A. The managing agent and principals shall keep and maintain records for all employees and independent contractors of the massage business during the term of the person's employment and for at least three (3) years thereafter. These records shall, at a minimum, contain the following: name, age, current address and telephone numbers, description of the duties and responsibilities of the person, a copy of the valid government-issued photographic identity card of the person, and any other information reasonably required by the City Clerk's Office. The records shall also include a copy of the massage therapist license held by any licensed massage therapist working on the premises.

B. The Police Department and the City Clerk's Office may inspect each licensed massage business to determine compliance with the provisions of this part. The Police Department or City Clerk's Office shall inspect the premises and records at any reasonable time during the hours of operation or apparent activity. Upon request of the Police Department or the Clerk's Office, the licensed premises, including any places of storage, shall be open and made immediately available for inspection. Where any part of the licensed premises consists of a locked area, the area shall be unlocked and made available for inspection without delay upon request of the Police Department or City Clerk's Office.

2.3.109: NOTICE OF UNLICENSED MASSAGE BUSINESS:

Where the Police Department or the City Clerk's Office determines that an unlicensed premises is being used to operate a massage business, in addition to any other notice

provided for in Article 1 of this Chapter, the Police Department or the Clerk may provide notice of the requirements of this part to the owner and occupants of the premises by affixing a notice to the principal entrance of the unlicensed premises and by mailing notice to the property owner as their address appears on the tax records of the County Assessor.

Section 2. Any person convicted of violating Part 1 (Massage Businesses) of Article 3 (Sales of Goods and Services) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) shall be punished as provided in Sections 201 (General Penalty) and 202 (Minor Offenders) of Part 2 (General Penalty) of Article 1 (Administration) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs, 2001, as amended.

Section 3. This ordinance shall be in full force and effect from and after July 1, 2022.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ___ day of _____, 2022.

Finally passed: _____

Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk