

ORDINANCE NO. O-023-001

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

**AN ORDINANCE ESTABLISHING BUSINESS LICENSURE REQUIREMENTS TO
REGULATE MASSAGE FACILITIES AND TO REGULATE AND PROHIBIT
UNLAWFUL ACTIVITIES FOR THE SOLE PURPOSE OF DETERRING ILLICIT
MASSAGE BUSINESS AND PREVENTING HUMAN TRAFFICKING, WITHIN THE
UNINCORPORATED PORTIONS OF DOUGLAS COUNTY, COLORADO**

WHEREAS, the Board of County Commissioners of the County of Douglas, Colorado, (“Board”) is authorized to enact this ordinance pursuant to C.R.S. § 30-15-401.4, in order to establish a licensing authority to regulate massage businesses and to deter and shut down illicit massage businesses; and

WHEREAS, C.R.S. § 12-235-101 et seq, known as "The Massage Therapy Practice Act" ("the Act"), regulates the profession of massage therapy to provide for consistent statewide certification and oversight of massage therapy professionals; and

WHEREAS, the Board finds that the purpose and intent of the Act is to regulate and protect legitimate massage therapy businesses in order to also safeguard and promote the public health, safety, and welfare of the citizens, including those residing within Douglas County, while recognizing that massage is a legitimate health care professional activity that provides benefits to the residents of the County; and

WHEREAS, the reputation and success of legitimate massage therapy businesses is denigrated and undermined by individuals who mask their unlawful sexual activities and human trafficking by falsely posing as massage therapy businesses; and

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, COLORADO, THAT:

PART I: GENERAL

Section 1. **Definitions:** Except as otherwise indicated by context, the following words, terms, and phrases shall have the following meanings for purposes of this ordinance:

- (a) "Advertise" or “advertisement” 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 to be placed 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.

- (b) "Agent" means an individual designated by a massage facility to act on behalf of the massage facility under this ordinance.
- (c) "Applicant" means an individual acting on behalf of a massage facility to apply for a license.
- (d) "Client" means an individual who enters into an agreement for massage therapy for a fee, income, or compensation of any kind within the County.
- (e) "Control" means the power to direct or cause the direction of the management and policies of an applicant, licensee, controlling person, manager, agent, or employee, in any way.
- (f) "Controlling Person" means a person directly or indirectly possessing control of an applicant or licensee.
- (g) "Employee" means any person who performs any service at a massage facility on a full-time, part-time, or contract basis, whether the person is designated an employee, independent contractor, or otherwise. "Employee" does not include a person exclusively engaged in the repair or maintenance of the massage facility, or in the delivery of goods to the licensee or facility.
- (h) "Erotic parlor" means a facility that entices clients through advertising or other business practices directed towards sexual desire, lust, or passion.
- (i) "Fully clothed" means fully opaque, nontransparent material that must not expose an employee's genitalia or substantially expose the employee's undergarments.
- (j) "Home business" means a business, profession, occupation, or trade that is conducted within a residential dwelling unit for the economic gain or support of a resident of the dwelling and is incidental and secondary to the residential use of the lot, and that does not adversely or perceptively affect the character of the lot or surrounding area. This use shall not include an animal hospital, day care, health clinic, hospital, kennel, tearoom, or hemp fabrication, manufacturing, or processing.
- (k) "Illicit massage business" means a business that may provide massage but engages in human trafficking-related offenses, as described in C.R.S. §§ 18-3-503 and 18-3-504.
- (l) "Licensing authority" means the governing body of the Board of County Commissioners of Douglas County, or any authority designated by County charter or County resolution.
- (m) "Manager" is 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 licensee or massage facility by this ordinance.

- (n) "Massage facility" means any place of business where massage therapy or full-body-massage is practiced or administered. The term "massage facility" shall not include:
- (1) Training rooms in public and nonpublic institutions of higher education, as defined in C.R.S. § 23-3.1-102(5).
 - (2) Training rooms of recognized professional or amateur athletic teams.
 - (3) Offices, clinics, and other facilities at which medical professionals licensed by the state of Colorado, or any other state, provide massage services to the public in the ordinary course of their medical profession.
 - (4) Medical facilities licensed by the state.
 - (5) 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.
 - (6) Bona fide athletic clubs not engaged in the practice of providing massage therapy to members or to the public for remuneration, or an athletic club that does not receive more than 10 percent of its gross income providing massages to the athletic club's members or to the public.
 - (7) A place of business where a person offers to perform or performs massage therapy:
 - (i) For 72 hours or less in any six-month period; and
 - (ii) As part of a public or charity event, the primary purpose of which is not to provide massage therapy.
 - (8) A place of business where a licensed massage therapist practices as a solo practitioner, and:
 - (i) Does not use a business name or assumed name; or
 - (ii) Uses a business name or assumed name and provides the massage therapist's full legal name or license number in each advertisement, and each time the business name or assumed name appears in writing; and
 - (iii) Does not maintain or operate a table shower.
 - (9) The licensing authority may verify the exempt status of a business or facility in keeping with the intent of this ordinance.
 - (10) The licensing authority may promulgate additional exemptions to the definition of

“massage facility.”

(11) If there is a continued pattern of criminal behavior regarding sexual misconduct, or criminal intent that is related to human trafficking disguised as a legitimate exemption, the licensing authority may, at its discretion, determine that a practice is no longer exempt from the definition of “massage facility.”

- (o) "Massage" or "massage therapy" means 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 of human hands.
- (p) "Massage therapist" means an individual that has fulfilled the requirements for state licensure under C.R.S. § 12-235-108 and has a valid massage therapist license issued by the state of Colorado to engage in the practice of massage therapy. The terms “masseuse” and “masseur” are synonymous with the term “massage therapist.”
- (q) “Mobile Massage Unit” means a vehicle or other movable enclosure specifically equipped for a massage therapist to provide massage therapy inside the vehicle or enclosure.
- (r) "Person" means a natural person, partnership, association, company, corporation, or organization or managing agent, servant, officer, partner, owner, operator, or employee of any of them.
- (s) “Sexual Act” means sexual contact, sexual intrusion, or sexual penetration as defined in C.R.S. § 18-3-401.
- (t) "Solo practitioner" means a licensed massage therapist, as defined in this ordinance, performing the practice of massage therapy independently.
- (u) "Table shower" means an apparatus for the bathing or massaging of a person on a table or in a tub.

PART II: MASSAGE FACILITY LICENSES

Section 2. Licenses generally; minimum requirements.

- (a) The licenses required by this ordinance are in addition to any other applicable licenses or permits required by municipality, county, or state. Massage facilities licensed under this ordinance shall comply with all other applicable ordinances and laws, including zoning

ordinances.

Section 3. License required.

- (a) Each new massage facility in Douglas County must obtain a massage facility license prior to opening for business and operating as a massage facility; and
- (b) Each existing massage facility that operated in Douglas County prior to May 11, 2023, and which continues to operate in Douglas County thereafter, must submit a complete application for a massage facility license on or before December 31, 2023; and
- (c) No person shall be permitted to operate a massage facility in Douglas County without a valid massage facility license.

Section 4. Application.

- (a) In addition to the requirements of any other applicable laws, codes, or regulations, each application for a massage facility license shall contain the following information:
 - (1) If the applicant is an individual; satisfactory proof that he or she is 18 years of age or older.
 - (2) If the applicant is a legal entity; satisfactory proof that each of the individual officers, directors, managers, partners, members, principal owners, and/or anyone with a 10 percent or more financial interest of such entity are 18 years or older.
 - (3) Whether the applicant, or any of the other individuals required to be listed in the application pursuant to subsection (a)(2) of this section 4, have been convicted of, or entered a plea of "nolo contendere" that is accepted by the court, for a felony or misdemeanor, in any Federal, State, or Municipal court in any of the United States jurisdictions or possessions, for prostitution, solicitation of prostitution, any human trafficking related offense, fraud, theft, embezzlement, money laundering, or similar crimes. Failure to disclose any such criminal conviction may result in denial of the license application.
 - (4) Whether the applicant, or any of the other individuals required to be listed in the application pursuant to subsection (a)(2) of this section 4, is registered as a sex offender or is required by law to register as a sex offender, as described in C.R.S. § 16-22-103.
 - (5) Whether the applicant, or any of the other individuals required to be listed in the application pursuant to subsection (a)(2) of this section 4, has a pending criminal action that involves or is related to any offense described in subsections (a)(3) and (a)(4) of this section 4.
 - (6) Whether the applicant, or any of the other individuals required to be listed in the

application pursuant to subsection (a)(2) of this section 4, has voluntarily surrendered any license to practice as a massage therapist or operate a massage facility as a result of, or while under, civil or criminal investigation, or had a previous license under this or any other similar massage facility law or regulation in another jurisdiction or possession of the United States, denied, suspended, or revoked, and if so, the name and location of the massage facility for which such license was surrendered, denied, suspended, or revoked, as well as the date of such surrender, denial, suspension, or revocation.

(7) Whether the applicant, or any of the other individuals required to be listed in the application pursuant to subsection (a)(2) of this section 4, has been an officer, director, manager, partner, member, controlling person, and/or principal owner of any legal entity which currently operates or previously operated a massage facility or business meeting the definition of massage facility in this ordinance and the name, dates of operation, and location of such business or businesses.

(8) Satisfactory proof of the applicant's ownership or right to possession of the premises wherein the massage facility will be operated. The applicant shall have a continuing obligation to provide, where applicable, subsequent evidence of the right to possession of the premises.

(b) The licensing authority shall receive, review, approve, or deny license applications.

(c) The licensing authority may require a reasonable administrative fee not to exceed one hundred and fifty dollars for issuing or renewing licensure applications. Such fee shall not be based on the number of employees.

Section 5. **Sheriff's Office Review.**

(a) Prior to the issuance of any massage facility license, the corresponding application and background check information shall be referred to the Douglas County Sheriff's Office. The licensing authority, or the licensing authority's designee, may utilize the applicant's or licensee's criminal history record to determine whether the applicant or licensee is approved or denied a license based on the criminal history information.

(b) The Sheriff's Office shall not be authorized to approve or disapprove any license application.

Section 6. **Issuance; denial.**

(a) If, after reviewing the application and conducting an investigation, the licensing authority finds that the individual applicant and each of the individuals required to be listed in the corresponding license application satisfy the requirements in section 4:

(1) Are 18 years of age or older; and

- (2) Have not been convicted of, or pleaded nolo contendere to, an offense involving prostitution, solicitation of prostitution, any human trafficking related offense, fraud, theft, embezzlement, money laundering, or similar crimes; and
 - (3) Are not a registered sex offender or required by law to register as a sex offender; and
 - (4) Have not (a) voluntarily surrendered any license to practice as a massage therapist or operate a massage facility as a result of, or while under, civil or criminal investigation; or (b) had a license to practice as a massage therapist, or to operate a massage facility or similar license, revoked or suspended by the State of Colorado or a political subdivision of Colorado, or a regulatory board in another United States jurisdiction or possession, for an act that occurred in that jurisdiction that would be a violation of this ordinance; and
 - (5) The proposed location of the applied-for massage facility has not had a similar license revoked, suspended, or surrendered for cause within the last 24 months; and
 - (6) The administrative fee has been paid.
- (b) Then he or she shall, following receipt of the complete license application and background check, approve the issuance of a massage facility license to the applicant for use at the location identified in the license application as the situs of the business.
 - (c) The licensing authority shall be empowered to place reasonable conditions and restrictions, on a case-by-case basis, upon any massage facility license that would otherwise be denied, revoked, or suspended. The licensee shall have the right to a hearing before the licensing authority to review any such conditions or restrictions.
 - (d) Only if, after reviewing the application, the licensing administrator finds, in addition to findings required by any other law, code, or regulation, that:
 - (1) The required administrative fee is not paid; or
 - (2) The County zoning or subdivision regulations do not allow for the operation of a massage facility at the proposed location; or
 - (3) The applicant has been convicted of, or has entered a plea of guilty or nolo contendere that is accepted by the court for a felony or misdemeanor for Prostitution, as described in C.R.S. § 18-7-201; Solicitation of a Prostitute, as described in C.R.S. § 18-7-202; a human trafficking-related offense, as described in C.R.S. § 18-3-503 or 18-3-504; Money Laundering, as described in C.R.S. § 18-5-309; or similar crimes; or
 - (4) The applicant is registered as a sex offender or is required by law to register as a sex offender, as described in C.R.S. § 16-22-103; or

- (5) The applicant has a pending criminal action that involves or is related to the offenses described in subsection (d)(3) or (d)(4) of this section 6; or
 - (6) The applicant has one or more previous revocations or suspensions of a license to operate a massage facility.
- (e) Then he or she may, following receipt of the complete license application and background check, issue a denial of the application. In the event of a denial, the licensing authority shall explain in writing, with reasonable detail, the reason for the denial.
- (f) A licensing authority or its designee shall have discretion to deny an application after considering, in accordance with C.R.S. § 24-5-101, an applicant's conviction of, or plea of guilty or nolo contendere that is accepted by the court for felony or misdemeanor Fraud, Theft, or Embezzlement, as described in C.R.S. § 18-4-401.
- (g) In the event that the licensing authority takes into consideration information concerning the applicant's or licensee's criminal history, the licensing authority shall also consider any information provided by the applicant or licensee regarding the criminal history, including, but not limited to, evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially the mitigating factors pertaining to the period of time between the applicant's last criminal conviction and the consideration of the applicant's application for a license or renewal.

Section 7. Temporary license.

- (a) The licensing authority may issue a temporary massage facility license upon receipt of a complete massage facility license application involving the sale or change in ownership of a business. Such temporary license shall be valid for thirty days, and the licensing authority shall renew the temporary license every thirty days until approval or denial of the massage facility license.

PART III: REGULATION

Section 8. Limitations on operation – prohibited acts.

- (a) It shall be unlawful for any person in the business of operating a massage facility, or any manager or employee thereof, to:
- (1) Allow a person who does not hold a valid massage therapy license pursuant to C.R.S. § 12-235-107 to perform massage in a massage facility.
 - (2) Advertise to a prospective client that services including prostitution, sexual acts, escort services, sexual services, or services related to human trafficking disguised as legitimate services, are available.

- (3) Permit sexual acts or sexual services within or near a massage facility or in relation to massage therapy.
- (4) Deny inspection of a massage facility by law enforcement, the licensing authority, or the licensing authority's designees.
- (5) Refuse, interfere with, or elude immediate identification of employees of the massage facility to law enforcement, the licensing authority, or the licensing authority's designees.
- (6) Fail to immediately report to the Douglas County Sheriff's Office any act of sexual misconduct occurring in a massage facility.
- (7) Allow an employee or contractor of a massage facility to provide massage therapy without being fully clothed.
- (8) Require client nudity as part of a massage without the client's prior consent.
- (9) Allow a massage facility to be open and practicing massage therapy without a licensed massage therapist on the premises.
- (10) Permit a person in a massage facility to make an agreement with an employee or contractor to engage in any prostitution-related offense in the massage facility or any other location.
- (11) Permit a massage facility to be used for housing, sheltering, or harboring any person, or as living or sleeping quarters for any person; except that an owner and the owner's family members who operate a massage facility as a home business are exempt from the prohibited activity in this subsection (a)(11).
- (12) Operate an erotic parlor on the premises of a massage facility.
- (13) Operate a massage facility without a valid massage facility license.

Section 9. Required Acts.

(a) Every licensed massage facility shall be required to:

- (1) Maintain a list of all employees on site including the start date of employment, full legal name, date of birth, home address, telephone number, and employment position of each employee.
- (2) Require that all licensees and employees have at least one of the following forms of valid government identification, and immediately present such identification to the licensing authority or the licensing authority's designees upon request:

- (i) A United States military card or military dependent's identification card; or
 - (ii) A United States Coast Guard Merchant Mariner card; or
 - (iii) A Native American tribal document; or
 - (iv) A valid Colorado driver's license or Colorado identification card issued pursuant to article 2 of title 42, unless the applicant holds a license or card issued pursuant to part 5 of article 2 of title 42; or
 - (v) A valid driver's license or identification card issued by another state, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States that is compliant with the federal "REAL ID Act," as amended; or
 - (vi) A valid United States passport; or
 - (vii) A valid United States permanent resident card; or
 - (viii) Any other valid type of identification that requires proof of lawful presence in the United States to obtain.
- (3) Require licensed massage therapists to maintain copies of valid massage therapy licensure, as required by C.R.S. § 12-235-107, and a form of identification containing the therapist's name, address, and social security number or individual taxpayer identification number, that must be immediately presented to the licensing authority, the licensing authority's designees, or law enforcement upon request.
- (4) Maintain a complete set of records including a log of all massage therapy administered at the facility. The records shall include all accounts, invoices, payroll, and employment records of the massage facility. The log shall include the date, time, and type of each massage therapy administered, and the name of the massage therapist administering the massage therapy. The licensee shall retain the records and log book for a minimum of one year following any massage therapy. The records and log shall be subject to inspection upon request by the licensing authority, the licensing authority's designees, and law enforcement, during normal business hours, in compliance with applicable law.
- (5) Operate under or conduct business under only the designation specified in the license.
- (6) Ensure that all employees and contractors remain fully clothed in professional attire while administering massage or otherwise visible to clients on business premises, including premises designated by the client through an outcall massage service or mobile massage unit.

- (7) Maintain a valid massage facility license prior to and during all periods of operation.

Section 10. Inspections.

- (a) The licensing authority, or the licensing authority's designees, shall be responsible for enforcement of this ordinance including inspection of massage facilities.
- (b) No owner, manager, massage therapist, or employee shall fail to immediately grant full massage facility access any time such establishment is open for business, to the licensing authority, the licensing authority's designees, or any other person authorized or required by law to inspect the massage facility.
- (c) All rooms, cabinets, and storage areas shall be subject to inspection and any locked rooms, cabinets, or storage areas shall be promptly opened for inspection.
- (d) Each massage facility shall keep a complete book of records to include a log of all massage therapy administered at the facility, as required in section 9 (a)(4) of this ordinance, open to inspection without unreasonable delay.
- (e) Inspectors may request to review a State-issued massage therapist license for any massage therapist or other employee of the massage facility at any time during an inspection.
- (f) All owners, managers, massage therapists, employees, contractors, or persons occupying the facility other than clients shall present identification and shall not elude identification.

Section 11. Revocation or suspension of license; Penalties

- (a) The licensing authority, or the licensing authority's designees, may revoke or suspend a license for violating any prohibited act pursuant to section 8 of this ordinance.
- (b) The licensing authority, or the licensing authority's designees, may temporarily suspend a massage facility license with a hearing to be scheduled within 15 days when the licensing authority finds:
 - (1) The licensee willfully failed to disclose any information on the application as required; or
 - (2) The licensee knowingly permitted a person who does not hold a valid license pursuant to C.R.S. § 12-235-107 to perform massage therapy; or
 - (3) A pattern of activity that the massage facility is committing human trafficking-related offenses as described in 18-3-503 and 18-3-504; or
 - (4) The licensee failed to permit an inspection in accordance with section 10 of this

ordinance any time the facility is open for business.

- (c) A law enforcement officer may follow the penalty assessment procedure described in C.R.S. § 16-2-201 for any violation.
- (d) The licensing authority or its designees may impose the following additional penalties when it is found that a licensee has violated any of the prohibited activities described in section 8 of this ordinance:
 - (1) A fine of \$300.00 for a first violation.
 - (2) A fine of \$600.00 for a second violation by the same person or licensee.
 - (3) A fine of \$1,000.00 for a third or subsequent violation by the same person or licensee.
- (e) A massage facility that engages in two or more violations of this ordinance is a public nuisance, as described in C.R.S. § 16-13-303, unless the violation is already a public nuisance, as described in C.R.S. § 16-13-303. The County Attorney of Douglas County, or the District Attorney acting pursuant to C.R.S. § 16-13-302, may bring an action in the District Court of Douglas County for an injunction against any massage facility that violates this ordinance.
- (f) The licensee may appeal the revocation or suspension of a license in accordance with C.R.C.P. 106(a)(4).

Section 12. Fees.

- (a) The application and annual license fees shall be established by the licensing authority in accordance with the provisions of section 4 (c) of this ordinance.

Section 13. Repeal.

- (a) All ordinances, or parts of ordinances, of the County of Douglas, Colorado, in conflict herewith are expressly repealed.

Section 14. Adoption.

- (a) Pursuant to C.R.S. §§ 30-15-405 and 406, County ordinances are typically adopted on First Reading at a Board of County Commissioner Business Meeting. Subsequently, after notice has been provided in the newspaper, the Board of County Commissioners will adopt an ordinance at Second and Final Reading, which is conducted at a public hearing. If adopted as an “emergency ordinance,” the ordinance will take effect immediately. Otherwise, all ordinances go into effect 30 days after publication after Second and Final Reading.

PART IV: CERTIFICATION

The Douglas County Clerk shall certify to the passage of this ordinance and shall have on file copies of this ordinance available for inspection by the public during regular business hours.

INTRODUCED, READ AND ADOPTED ON FIRST READING on _____, 2023, and ordered published in the DOUGLAS COUNTY NEWS-PRESS.

**THE BOARD OF COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

By: _____
Abe Laydon, Chair

ATTEST:

Deputy Clerk

ADOPTED ON SECOND AND FINAL READING on _____, 2023, and ordered published by reference to title only in the DOUGLAS COUNTY NEWS-PRESS.

**THE BOARD OF COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

By: _____
Abe Laydon, Chair

ATTEST:

Deputy Clerk

CERTIFICATE

I hereby certify that the foregoing Ordinance No. O-023-001 was introduced, read and adopted on first reading at the regular meeting of the Board of County Commissions of the County of Douglas on March 28, 2023, and the same was published in full in the Douglas County News-Press, a newspaper of general circulation published in Douglas County, on March ____, 2023, and thereafter was adopted on second and final reading at a regular public hearing of the Board of County

Commissioners of the County of Douglas on April 11, 2023. Said ordinance was published by reference to title only on April 13, 2023. Said ordinance shall become effective as of May 13, 2023.

Deputy Clerk

State of Colorado)
)ss.
County of Douglas)

Subscribed and sworn to before me this ____ day of _____, 2023, by _____, Deputy Clerk.

Notary Public

My commission expires: _____

CERTIFICATION

I, _____, Douglas County Deputy Clerk, do hereby certify that the foregoing Ordinance No. O-023-001, entitled, **AN ORDINANCE ESTABLISHING BUSINESS LICENSURE REQUIREMENTS TO REGULATE MASSAGE FACILITIES AND TO REGULATE AND PROHIBIT UNLAWFUL ACTIVITIES FOR THE SOLE PURPOSE OF DETERRING ILLICIT MASSAGE BUSINESS AND PREVENTING HUMAN TRAFFICKING, WITHIN THE UNINCORPORATED PORTIONS OF DOUGLAS COUNTY, COLORADO**, is a true, correct and complete copy from the records in my office, that said ordinance was duly adopted by the Board of County Commissioners of Douglas County and is in full force and effect.

Deputy Clerk