

ORDINANCE NO. 21-_____

AN ORDINANCE OF THE CITY OF BILLINGS, MONTANA, REGULATING MASSAGE FACILITIES THROUGH BUSINESS LICENSING CRITERIA, PROVIDING EXEMPTIONS, AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ADMINISTRATIVELY DENY, SUSPEND OR REVOKE BUSINESS LICENSES AND ALLOWING AN APPEAL FROM SUCH ACTION AND PROVIDING FOR CRIMINAL PENALTIES UPON CONVICTION OF A VIOLATION IN ORDER TO COMBAT HUMAN TRAFFICKING.

WHEREAS, licensed massage therapy is a professional pursuit which can offer the public valuable, useful and efficacious health and therapeutic services;

WHEREAS, §37-33-405, Mont. Code Ann. provides for the Board of Massage Therapy which was created by the Montana Department of Labor and Industry to regulate the profession of massage therapy in order to fulfill its purpose to ensure the health, safety, and welfare of the people of this state as set forth in Montana Administrative Rule 24.1.101(4)(iv)(L);

WHEREAS, these provisions do not prevent the City from regulating the massage therapy business and the City wishes to exercise its regulatory powers as a self-governing unit of local government;

WHEREAS, the City Council finds there is a need for local regulation because the Board of Massage Therapy has not enacted specific regulatory oversight of massage therapy businesses other than licensing and education regulations;

WHEREAS, the City Council finds the purpose and intent of this section 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 of Billings, while recognizing that massage therapy is a legitimate health care profession that provides benefits to the residents of the City;

WHEREAS, the City Council further recognizes that, unless properly regulated, the practice of illicit businesses under the pretense of being spas or massage therapy businesses may be associated with unlawful activity and pose a threat to the quality of life in the local community;

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

WHEREAS the presence of such illicit businesses has an adverse impact on surrounding properties and result in blight, cultivate further illegal activities and generally become a public nuisance.

NOW, WHEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That Article 7-1800 of the Billings, Montana City Code be created and added so that such section shall read as follows:

Sec. 7-1801 Purpose and Intent.

It is the purpose and intent of this Article to regulate and protect legitimate massage therapy businesses in order to also safeguard and promote the public health, safety and welfare of the residents of the city, while recognizing that massage is a legitimate health care professional activity that provides benefits to the residents of the city.

Sec. 7-1802 Definitions.

For the purposes of this Article, and consistent with the definitions set forth in any applicable sections of the Montana Code Annotated, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this section shall have the following meanings:

- (a) "Agent" means an individual designated by a publicly-held corporation to act on behalf of the corporation. An agent shall be a bona fide resident of Montana, a citizen or legal resident of the United States, or otherwise authorized to work in the United States.
- (b) "Applicant" means an individual acting on behalf of a massage facility or spa to apply for a license.
- (c) "Board" means the board of massage therapy provided for in MCA 2-15-1782.
- (d) "Client" means an individual who enters into an agreement for massage therapy or spa services to be provided within the city for a fee, income, or compensation of any kind.
- (e) "Control" means the power to direct or cause the direction of the management and policies of an applicant, licensee or controlling person, in any way.
- (f) "Controlling person" means a person directly or indirectly possessing control of an applicant or licensee.
- (g) "Department" means the department of labor and industry provided for in MCA 2-15-1701.
- (h) "Dormitory" means a location, other than a residence, where there are signs that individuals working for a massage therapy facility or spa are living there

- or engaged in communal sleeping, including but not limited to, beds, mattresses or cots.
- (i) "Employee" means any person who performs any service at a massage facility or spa on a full-time, part-time, or contract basis, whether or not 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 facility, or for the delivery goods to the licensee.
 - (j) "Erotic parlor" means a business or facility, other than those defined in Sec. 27-611(c)(10), that entices clients through advertising or other business practices directed toward sexual desires, lust or passions.
 - (k) "For compensation" means the exchange of massage or spa services directly or indirectly for money, goods, services or other valuable consideration. An establishment cannot avoid the requirements of this Article by offering nominally free massage in conjunction with other services or goods provided for compensation.
 - (l) "License" means a written document issued authorizing the holder to practice massage therapy or to engage in the business of providing massage for compensation.
 - (m) "Licensee" means the person holding a license.
 - (n) "License administrator" is the City Administrator or his/her designee, including but not limited to code enforcement officers.
 - (o) "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 manager by this section.
 - (p) "Massage facility" means any place of business where any massage therapy or full body massage is practiced, administered, or advertised. The term "massage facility" shall not include and therefore shall exempt businesses if they only provide services of the types provided by the professionals listed in MCA 37-33-404(1) (for healthcare professionals and others) and (4) (for Native American traditional healing or faith healing).
 - (q) "Massage" or "Massage Therapy" means massage therapy as defined in MCA 37-33-403(4) and, for purposes of this ordinance, also includes the practices listed in 37-33-404(5), including but not limited to, bodywork therapy, reiki, shiatsu, the Trager approach to movement education, the Rolf method of structural integration, Hellerwork, and reflexology.
 - (r) "Massage therapist" includes those professionals licensed by the Board of Massage Therapy as defined in MCA 37-33-403(3); those performing services as set forth in, and with the exceptions listed in, MCA 37-33-403(4); and practitioners who offer services such as those listed in MCA 37-33-404(5). Massage therapists do not include those healthcare professionals,

- teachers, students, people practicing Native American healing, or others who are exempted from the requirements applicable to licensed massage therapists by MCA 37-33-404(1), (2), (3), and (4).
- (s) "Operator" means any person who operates and is responsible for the day-to-day activities of a massage or spa establishment.
 - (t) "Owner" means any person who has any direct or indirect ownership interest in a massage or spa establishment.
 - (u) "Permit" means a written document authorizing the holder to practice massage therapy or to engage in the business of providing massage for compensation.
 - (v) "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character.
 - (w) "Sexual Act" means sexual contact, sexual intrusion, or sexual penetration as defined in MCA §45-2-101(67) and (68).
 - (x) "Spa" establishment means a business or facility that offers or engages in personal services that call for the patron to fully or partially disrobe, such as, but not limited to, massage, body wraps, hydro mineral wraps, body polish, body scrub, body wash, baths and hydro tub soak.
 - (y) "Table Shower" means an apparatus for the bathing or massaging of a person on a table or in a tub.

Sec. 7-1803 Licenses generally, minimum requirements.

The licenses required by this article replace the regular City licenses for businesses offering massage services, but are in addition to any other applicable licenses or permits required by the city code, county or state. Spa and massage facilities licensed under this article shall comply with all other applicable ordinances and laws, including the city zoning ordinances.

Sec. 7-1804 License Required.

- (a) It is unlawful for any person to operate a facility which offers massage in the City of Billings without a valid license issued by the city as required by this Article.
- (b) It is unlawful for any individual to practice massage therapy or administer massage for compensation in the City of Billings without first obtaining a valid license as required under MCA 37-33-501.
- (c) Students and instructors who meet the requirements of MCA 37-33-404(2) and (3) are exempted from the requirements of this section.

Sec. 7-1805 Application for license.

- (a) Any person desiring to obtain a license to operate a facility which offers massage shall make written application to the city finance office.
- (b) The application shall be verified and accompanied by the application fee.
- (c) Confidential information provided in the license application will not be publicly available.
- (d) All applicants shall provide the following information under oath:
 - 1. The full name and any aliases used by the applicant;
 - 2. If the applicant is an individual, the name, date of birth, place of birth, race (optional), sex (optional), address, telephone numbers and email address of the proposed licensee;
 - 3. If the applicant has resided at the current address for less than two years, two previous residential addresses immediately prior to the current residential address of the applicant and the dates of residence at each;
 - 4. Business, occupation or employment history of the applicant for the five years immediately preceding the date of application;
 - 5. The name, physical address, email address, and telephone number of the business and type of business organization (individual, partnership, corporation or limited liability company). If the business is a partnership, corporation, or limited liability company, the same information required of an individual applicant in subsections (2), (3), (14), (15) and (16) is required of all partners, officers, directors, managers, members or persons owning more than five percent of the common or preferred stock or other indicia of ownership of the business;
 - 6. The proposed address and name or names of the premises upon which the massage therapy business for which a license is sought will be located and any name under which the applicant plans to conduct business ("dba" name);
 - 7. The hours that the massage therapy business service will be open to the public, including such times that the door or doors providing entry to the massage therapy business may be locked as allowed under section 7-1810(e);
 - 8. A list of services to be provided at the facility;
 - 9. The name, physical address, email address, and telephone number of the owner of the premises upon which the massage therapy business is to be located;
 - 10. A certificate of good standing from Montana, or other state of incorporation or registration, if the applicant is a corporation, partnership or limited liability company;

11. Information as to whether the applicant or any partner, officer, director, manager, member or person owning more than five percent of the common or preferred stock or other indicia of ownership of the business has, within five years preceding the date of application, been convicted of, or on diversion or deferred judgment for any felony, financial crime, or sexual offense and an explanation of all such convictions, diversions, or deferred judgments (a conviction is not an automatic bar to obtaining a business license);
12. Information as to whether the applicant or any partner, officer, director, manager, member or person owning more than five percent of the common or preferred stock or other indicia of ownership of the business is currently under indictment, charge or information for any felony, financial crime, or sexual offense and an explanation of all such allegations (an indictment, charge or information is not an automatic bar to obtaining a business license);
13. A statement as to whether the applicant or any partner, officer, director, manager, member or person owning more than five percent of the common or preferred stock or other indicia of ownership of the business is a registered sex offender;
14. Information as to whether such individual or business has ever been refused any similar license or permit, or has had any similar license or permit issued to such individual or business in the city or elsewhere revoked or suspended, and the reason therefor;
15. A state fingerprint background check must be completed and provided with the application. Please visit the Montana Department of Justice website at <https://dojmt.gov/enforcement/background-checks/> for more information. Upon renewal of license under section 7-1813, an applicant will not be required to submit another background check if all information remains the same as the previous year.
16. A statement by the applicant that he or she is familiar with the provisions of this Article and is complying and will comply with them, and
17. Any applicant intending to practice massage therapy or administer massage must provide the license issued by the DOLI as required under MCA 37-33-501.

Sec. 7-1806 Requirements to obtain license.

- (a) To receive and retain a license to operate a spa or massage facility, all applicants must meet the following requirements:
 1. The required fees as established by City Council must be paid;

2. The application must be complete and provide all information required by section 7-1805;
 3. The applicant must not have knowingly made a false or misleading statement of a material fact in the application;
 4. The applicant must be at least eighteen years of age;
 5. The operation of the business as proposed, if permitted, must comply with all applicable building, fire, health and zoning laws. Additionally, any massage therapy business operating out of a residence is subject to this Article and must meet all home occupation requirements of this code.
 6. The applicant must provide a copy of the license issued by the DOLI as required under MCA 37-33-501 for any massage therapist who will be working as a massage therapist at the massage facility.
- (b) For applicants who fall into any of the categories listed below, the licensing administrator will conduct an investigation as to the propriety of issuing a license:
1. The applicant has been convicted in any jurisdiction of a felony, financial crimes, or sexual offenses within five years immediately preceding the date of the application, For the purposes of this section the term "conviction" shall include entering into pretrial diversion (deferred prosecution agreement), being placed on a deferred judgment, or being adjudged guilty upon entering a plea of no contest;
 2. The applicant is currently under indictment, charge, or information for any felony, financial crimes, or sexual offenses;
 3. The applicant is a registered sex offender with any federal, state or local government; or
 4. The applicant had a similar type of license in any jurisdiction previously suspended or revoked for good cause within five years immediately preceding the date of the filing of the application.
- (c) If the applicant is a partnership, corporation, limited liability company or other type of organization, all persons having financial interest in the applicant shall meet the requirements described in subsections (a) through (b) above. Financial interest includes any board member, manager, member, officer, director, or officer of the subject organization and any stockholder or other owner holding more than five percent of the stock or other indicia of ownership of the organization.

Sec. 7-1807 Review by other departments.

Prior to the issuance of any massage facility license, the corresponding application may be submitted to other departments, including the Police Department, for review. The

Police Department shall provide information as to whether the applicant and each of the individuals required to be listed in the application meet the requirements of section 7-1806 and any other requirements of this Article. Such review shall be completed within 20 days after the complete license application is submitted. The Police Department shall only provide information and shall not approve or disapprove of any application.

Sec. 7-1808 Issuance.

If after any necessary investigation, the licensing administrator finds that the applicant and each of the individuals required to be listed in the corresponding license application meet the requirements in sections 7-1804, 7-1805, 7-1806, and any other requirements of the Billings city code, then the license application shall be approved within 45 days following receipt of the completed massage facility license application. Applicants will receive a temporary license to conduct business that shall be conditioned upon approval of the application. If the application is not approved such temporary license shall be void and considered invalid immediately upon notice of such disapproval.

Sec. 7-1809 Limitations on operation-prohibited conduct.

It shall be unlawful for any person in the business of operating a massage facility, or any manager or employee thereof, to:

- (a) Operate a spa or massage facility without a valid massage facility license or with a license that has been suspended, revoked, or expired.
- (b) Be open for business for the practice of massage therapy without a massage therapist on the premises who is licensed in accordance with MCA 37-33-501 and -502.
- (c) Permit a licensed spa or massage facility to be used as a dormitory or for housing, sheltering, or harboring any person(s), or as living or sleeping quarters for any person(s). The owner and family members of a massage facility operated as a home occupation, as defined by Article 13 of Billings city code, are exempt from this prohibition.
- (d) Massage any other person, or give or administer any spa, bath or baths, including table showers, in a manner intended to arouse, appeal to, or gratify the lust or passions, or sexual desires of such other person. In no case shall the employee intentionally touch or offer or agree to touch male or female genitalia of the client.
- (e) Allow any employee to provide massage therapy or other massage service without being fully clothed. For purposes of this subsection, clothing shall be of a fully opaque, nontransparent material that shall not expose the employee's genitalia or substantially expose the employee's undergarments.
- (f) Require client nudity as part of any massage service without the client's prior consent.
- (g) Place, publish or distribute, or cause to be placed, published or distributed, any misleading or false advertising that would reasonably suggest to

prospective clients that any service is available other than those services described in this Article, nor shall any spa or massage facility employ language in the text of any advertising what would reasonably suggest to a prospective client that any service is available other than those services described in this Article.

- (h) Use or possess adult-oriented merchandise or a sexual nature, including sex toys, sexual aids, vaginal or anal lubricant, or any contraceptive item, in any part of a massage facility.
- (i) Permit any individual, including a client, student, contractor, or employee, to engage in any sexual act in the massage facility.
- (j) Permit any person to make an agreement with an employee to engage in sexual activity in any other place in violation of Billings city code or state law.
- (k) Conceal persons in the facility, or refuse to provide identification to inspectors or law enforcement, or elude inspectors by exiting side or back doors or remain behind locked doors in the facility during an inspection.
- (l) Permit anyone to perform massage therapy without a valid massage therapist license issued under Billings city code and/or state law.
- (m) Operate between the hours of 10:00 p.m. and 6:00 a.m.
- (n) Operate an erotic parlor within the City as defined in this Article.

Sec. 7-1810 Requirements.

Every licensed massage facility shall be required to:

- (a) Maintain a current list of employees and contractors on site with start dates of employment or contracted service, full legal name, date of birth, place of birth, home address and telephone number, employment position, date first began service and the date when services were terminated, if applicable.
- (b) Maintain a copy of each massage therapist's Montana license for each employee and contractor performing massages.
- (c) Operate under or conduct business under only the designation specified in the license.
- (d) Massage therapists shall remain fully clothed in professional attire while administering massage to clients on business premises, including premises designated by the client through an outcall massage service.
- (e) Massage facilities interior and exterior doors shall remain unlocked while the massage facility is open except as follows:
 - 1. Restroom doors may be locked.
 - 2. Exterior doors may remain locked if permitted by applicable building or zoning codes and if the massage facility is owned by one individual with no more than one employee or independent contractor present in the facility. Exceptions may be granted by the license administrator.
 - 3. Internal doors may be locked to protect confidential client or business information except that internal doors may not be locked on rooms when a massage is being performed.

- (f) All massage facilities are required to have and maintain clear glass which is not painted over, darkened, or blocked by any cloth or obstruction, at the entrance to such establishment so that the front area where patrons are greeted is visible from the outside. A massage facility located in a building or residence that does not have glass on the front of the premises is required to notify the City in writing at the time of application or renewal.
- (g) List the address of the facility in any advertisement.
- (h) Provide a written list of prices for all services (through signage or written materials) of the massage facility available to all prospective customers.
- (i) Upon the sale or transfer of any ownership interest in a massage facility, the license issued pursuant to this Article shall be null and void, and a new application shall be required.

Sec. 7-1811 Inspections.

- (a) Any person operating a business within the City of Billings is subject to reasonable inspection provided in Section 13-432 to determine compliance with all laws and ordinances, including with this Section.
- (b) Each massage facility shall conspicuously display on the premises the license of each massage therapist working at the business or, for a mobile practice, make the license readily available as required by MCA §37-33-406(1), or as amended.
- (c) The license administrator, a designee of the Board of Massage Therapy, or a local law enforcement officer may enter a massage therapy business at any time during business hours to determine compliance with MCA §37-33-406(1), as provided in MCA §37-33-406(2).
- (d) All owners, managers, massage therapists, employees, contractors or persons occupying the facility other than clients shall present identification and shall not elude identification.

Sec. 7-1812 Denial, suspension or revocation of license.

The licensing administrator may suspend or revoke a massage facility license if he or she finds:

- (a) The licensee has violated any of the provisions of this Article; or
- (b) That the qualifications set forth in the application utilized to obtain a massage facility license were likely obtained through fraud, deceit or misrepresentation;
or
- (c) The State has revoked the massage therapy license of the licensee.

Any person or business entity aggrieved by any decision of the licensing administrator concerning the issuance or refusal to issue, suspension or revocation of a business license may appeal that action by filing a written notice of appeal with the city clerk. All appeals will be informally heard by an administrative hearing officer appointed by the city. Upon receipt of an appeal, the administrative hearing officer will schedule a time

and place for hearing such appeal. The city clerk will give written notice to the appellant of the time and place of hearing by causing the notice to be personally served or deposited in the United States mail at Billings, Montana, postage prepaid, addressed to the appellant at the address provided on the written notice of appeal. The administrative hearing officer will have authority to determine all questions raised on appeal.

The appeal shall clearly state the applicable basis for the appeal. The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by appellant in the written appeal, as submitted. The rules of evidence and civil procedure shall not apply to such a hearing. The revocation shall remain in effect during the period of appeal until such time as the hearing officer has issued a written decision. After a decision by the hearing officer, an aggrieved person or licensee may appeal to the City Administrator who shall review the written decision of the hearing officer. No hearing shall be permitted. The City Administrator may affirm or reverse the hearing officer decision. The decision of the City Administrator is final.

Any license issued under this Article is subject to suspension or revocation by the City Administrator or his/her designee for violation of any provision of this Article, violations of city, state or federal law, or for any grounds that would warrant the denial of the issuance of the permit(s) in the first instance.

When any license shall have been revoked for any cause, no license shall be granted to any person for a period of one year for the operation of a massage facility in the premises described in the revoked license. Any additional license for any other massage facility may be revoked or suspended in the discretion of the City Administrator for up to one year if held by the person whose license was revoked for cause or by a corporation, partnership, limited liability company, or other organization in which that person hold a controlling interest. The one-year prohibition described above shall also apply to the licensee's spouse, facility business partner, or any person who holds more than a ten percent ownership interest in any corporation, partnership, limited liability company or other organization that owns the revoked license.

Sec. 7-1813 Renewal application.

Every holder of a license required by this Article shall make application for renewal of his or her license every year. The renewal application shall include an update on any and all information set forth on the initial application and the renewal fee as established by the City Council. The license holder shall submit a written application for renewal at least 45 days before the license expiration date. If the licensee fails to timely submit the application, fails to timely provide the update information, or fails to timely pay the renewal fee, the underlying license shall be null and void on the expiration date stated on the license.

The requirements of this Article shall be effective immediately upon enactment of this Ordinance, and no license renewal of this Article or license renewal of a previous license issued under Article 13 shall be approved unless the applicant satisfies the

requirements herein. Any valid business license held at the time of enactment of this Ordinance shall remain valid through the expiration date of such license.

Sec. 7-1814 Land use and zoning requirements.

The premises and the property on which the premises occupied by a massage facility are located shall conform to all applicable land use and zoning requirements.

Sec. 7-1815 Massage facility owner and operator responsibility for employee acts.

Spa or massage facility owners and operators will be responsible for the conduct of all employees, contractors, volunteers and other persons who provide massage services on the premises or through arrangements with the massage facility. All persons working in or for the massage facility will be considered under the control of the massage facility owner and operator for the purposes of this Article, including independent contractors and unpaid volunteers. Any act or omission of such persons constituting a violation of this Article will be deemed to be the act or omission of the owner and operator for purposes of enforcing this Article.

Sec. 7-1816 Violation and Penalty. Affirmative Defense. Remedies Cumulative

- (a) Any person or licensee who violates any section of this article shall upon conviction be guilty of a misdemeanor and may be punished by a fine of up to \$500.00 and/or incarceration for a term of up to six (6) months. Each such person or licensee shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by any such person or licensee, and he/she shall be punished accordingly.

It shall be an affirmative defense under this article for an employee or massage therapist that such employee or massage therapist was under duress or coerced into violating a provision of this article. This affirmative defense is not available to any person or licensee who created or participated in creating the duress or coercion or who knew or should have known of the existence of the duress or coercion.

A victim of human trafficking as provided in state or federal law shall not be criminally liable for any violation of this ordinance committed as a direct result of or incident to being trafficked.

- (b) Any massage facility that fails to comply with the requirements of this Article shall be deemed to be creating a public nuisance and shall be subject to misdemeanor criminal penalties as provided in section 7-1816(a) above and section 1-110 and shall further be subject to civil action to restrain or abate as

authorized in sections 18-301 et seq. as the city deems appropriate. Such ability of the city to prosecute and/or enjoin or abate is in addition to any other remedies available to the city at law or in equity.

Sec. 7-1817 Remedies Cumulative

The remedies provided in this article are cumulative and do not preclude any other available remedy at law or in equity.

Sec. 7-1818 Changes in law

When reference is made in this Article to any local law or regulation or to any state or federal statute, regulation or other law, the reference includes any subsequent amendment or superseding provision.

Section 2. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of these ordinances are declared to be severable.

Section 3. Repealer. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. Effective Date. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

APPROVED on first reading this ____ day of _____, 2021.

ADOPTED and APPROVED on second reading this ____ day of _____, 2021.