

BY AUTHORITY

ORDINANCE NO. 21-0712
SERIES OF 2021

COUNCIL BILL NO. CB21-0712
COMMITTEE OF REFERENCE:
Safety, Housing, Education & Homelessness

A BILL

For an ordinance concerning the licensing and regulation of massage businesses and making conforming amendments to the Denver Revised Municipal Code in connection therewith.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. Chapter 33.5 shall be repealed and reenacted to read as follows:

Chapter 33.5 – MASSAGE BUSINESSES

Sec. 33.5-1. - Definitions.

(1) *Background check* means a national criminal history records check conducted by the federal bureau of investigation upon submission of fingerprint records and all required documents.

(2) *Director* means the director of the Denver Department of Excise and Licenses.

(3) *Department* means the Denver Department of Excise and Licenses.

(4) *Massage* 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 possible by human hands.

(5) *Massage business* means any place of business where any massage is practiced or administered in exchange for remuneration except as provided in section 33.5-2(b).

(6) *Massage therapist* has the same definition as provided in state law.

(7) *Principal* of an entity means any individual officers, directors, managers, partners, members, principal owners, and any natural person with ten (10) percent or more financial interest in the entity.

1 (8) *Sexual act* means sexual contact, sexual intrusion, or sexual penetration as
2 defined in C.R.S. 18-3-401.

3 **Sec. 33.5-2. - License Required; Exemptions.**

4 (a) *License required.*

5 (1) On and after July 1, 2022, it shall be unlawful for any person to operate a massage
6 business without a valid massage business license issued by the department
7 pursuant to this article.

8 (2) The license shall be conspicuously posted at all times on the licensed premises.

9 (b) *Exemptions.* The licensing requirements of this article do not apply to:

10 (1) Public and private schools accredited by the state board of education or
11 approved by the state division of private occupational schools;

12 (2) Facilities providing massage services by employees of any governmental entity;

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

17 (4) Offices, clinics, and other facilities at which health care professionals licensed or
18 registered with any state provide massage services to the public in the ordinary course of
19 their health care profession;

20 (5) Barber shops, beauty salons, and other facilities at which barbers and
21 cosmetologists licensed by the state provide massage services to the public in the ordinary
22 course of their professions;

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

26 (7) A place of business where a licensed massage therapist practices as a solo
27 practitioner; or

28 (8) A place of business which employs individuals who do not claim expressly or
29 implicitly to be massage therapists and provides alternative methods that employ contact.
30 For the purposes of this subsection, "alternative methods that employ contact" include, but
31 are not limited to:

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

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

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

6 d. Structural integration practices such as Rolfing and Hellerwork; and

7 e. The process of muscle activation techniques.

8 (c) *Pattern of criminal behavior.* If there is a continued pattern of criminal behavior with
9 arrests, complaints regarding sexual misconduct, or criminal intent that is related to human
10 trafficking disguised as a legitimate exemption under this section, the director may, at the
11 director's discretion, determine that a facility is no longer exempt from licensing pursuant to
12 subsection 33.5-2(b).

13 (d) *Records.* Each massage business shall maintain books and records on the licensed
14 premises with the following information for all employees and independent contractors who have
15 worked at the massage business within the past five years:

16 (1) The employee or contractor's name, date of birth, and contact information;

17 (2) The employee or contractor's start and end date of employment or service; and

18 (3) A valid copy of a massage therapist license for each person required by state law
19 to be licensed as a massage therapist.

20 **Sec. 33.5-3. - Application.**

21 (a) All applications for licensing as a massage business shall be made upon forms provided
22 by the department and shall include, in addition to any information required by Chapter 32 of this
23 code, the following information:

24 (1) A statement whether the applicant or any principal has been convicted of any
25 felony, misdemeanor, or municipal ordinance violation (other than traffic violations), the
26 nature of the offense, the penalty or punishment imposed, and the date and place where
27 such offense occurred;

28 (2) A statement whether a judgment for fraud, deceit, or misrepresentation was ever
29 entered against the applicant or any principal, and the details thereof;

30 (3) An affidavit attesting that each person required by state law to be licensed as a
31 massage therapist holds a valid state license;

32 (4) A background check for the applicant and all principals, completed no more than
33 sixty (60) days before the application date;

1 (5) A statement whether the applicant or any principal is or has been an owner,
2 officer, director, manager, partner, or member of any legal entity which currently operates
3 or previously operated a massage business and the name, dates of operation, and location
4 of such business or businesses;

5 (6) A statement whether the applicant or any principal has had a license under this
6 or any other massage business statute or ordinance, denied, suspended, or revoked, the
7 name and location of the massage business for which such license was denied,
8 suspended, or revoked, and the date of such denial, suspension, or revocation; and

9 (7) Proof of possession of the licensed premises, either by valid warranty deed, valid
10 lease, or other verification of the applicant's right to possession of the premises. If the
11 applicant does not own the property where the licensed premises are located, the applicant
12 must also provide written documentation from the property owner allowing the applicant to
13 operate a massage business on the premises.

14 (b) The director may, at the director's discretion, require additional documentation
15 associated with any application as may be necessary to enforce the requirements of this
16 article.

17 **Sec. 33.5-4. – Transferability of license.**

18 (a) No license for a massage business shall be transferable from one (1) person to another.
19 For the purposes of this subsection, the transfer, sale, or assignment of ten (10) percent or more of
20 the ownership interest as listed in the original application shall be deemed a transfer of ownership.

21 (b) No massage business license shall be transferable from one (1) location to another.

22 **Sec. 33.5-5. – Terms of licenses; renewals.**

23 (a) A license for a massage business shall be valid for a period of one (1) year from the date
24 of issuance, unless suspended or revoked earlier.

25 (b) Except when the department has received a complete renewal application, it shall be
26 unlawful for any person to operate a massage business after the expiration date recorded upon the
27 face of the license issued pursuant to this article.

28 (c) All applications to renew a massage business license shall include:

29 (1) An affidavit attesting that each person required by state law to be licensed as a
30 massage therapist holds a valid state license;

31 (2) A CBI individual records check from the Colorado Bureau of Investigation for the
32 applicant and all principals, completed no more than sixty (60) days before the renewal
33 application date; and

1 (3) Any additional information as required by the department.

2 (d) In addition to any other grounds specified in this Code, the director may refuse to renew
3 a license for any of the causes for denial provided in section 33.5-6 or any of the causes for
4 disciplinary action provided in section 33.5-7.

5 **Sec. 33.5-6. – Causes for denial.** In addition to the grounds set forth in chapter 32 of this Code,
6 no license for a massage business shall be issued to or held by:

7 (a) Any person who:

- 8 a. Is under the age of eighteen (18) years;
- 9 b. Has voluntarily surrendered any license to practice as a massage therapist or
10 operate a massage business in any jurisdiction as a result of, or while, under civil
11 or criminal investigation;
- 12 c. Has had a license to practice as a massage therapist or operate a massage
13 business denied or revoked;
- 14 d. Has been convicted of or released from incarceration for any felony within five (5)
15 years of the application date;
- 16 e. Has been convicted of or released from incarceration for any misdemeanor or
17 municipal ordinance offense involving fraud, theft, deceit, or misrepresentation
18 within five (5) years of the application date;
- 19 f. Has been convicted of operating without a license required under this article or
20 performing any act for which a license is required under this article;
- 21 g. Is required to register pursuant to article 22 of title 16, C.R.S., as amended.
- 22 h. Has been convicted of or released from incarceration for any offense where the
23 underlying factual basis has been found to include any sexual act;
- 24 i. Has a character and reputation showing a pattern of conduct or personal history
25 that does not demonstrate honesty, fairness, and respect for the rights of others
26 or for the law; or
- 27 j. Has been previously denied a license under this chapter 33.5 or has had a
28 license issued under this chapter suspended or revoked within five (5) years of
29 the application date.

30 (b) No massage business license shall be issued or held for a location at which a
31 massage business license was revoked or surrendered for cause within the preceding
32 24 months.

33

1 **Sec. 33.5-7. – Disciplinary actions.**

2 (a) In addition to the grounds provided in chapter 32 of the Code, a license under this article
3 may be suspended or revoked for any of the grounds for denial set forth in section 33.5-6 of this
4 article.

5 (b) Procedures for investigation of license violations, and for suspension, revocation, or other
6 licensing sanctions as a result of any such violation, shall be as provided in chapter 32 of the Code
7 and any rules and regulations promulgated by the director.

8 **Sec. 33.5-8. – Unlawful acts.** In addition to any other acts prohibited by this chapter, it shall be
9 unlawful for any person who operates a licensed massage business, or any supervisor, manager,
10 independent contractor, or employee thereof to commit the following acts on the premises:

11 (a) Perform or allow any person to perform massage if the person is required by state law
12 to be licensed as a massage therapist and the person does not hold such license;

13 (b) Fail to provide a valid copy of a massage therapist license for each person required to
14 be licensed pursuant to state law;

15 (c) Use or allow any other person to use the premises of a massage business for the
16 purposes of temporary or permanent housing, shelter, living quarters, or sleeping quarters;

17 (d) Perform, offer to perform, or agree to perform any sexual act, or allow another person to
18 perform, offer to perform, or agree to perform any such sexual act;

19 (e) Violate article 7 of title 18, C.R.S. as amended, or Chapter 38, Article 5, Division 2 of the
20 Code;

21 (f) Fail to call the police department when violations of city, state, or federal laws occur on
22 the premises or fail to cooperate in the investigation of such criminal activity when requested by
23 law enforcement;

24 (g) Place, publish, or distribute, or cause to be placed, published or distributed, any
25 misleading or false advertising that would reasonably suggest to prospective clients that sexual
26 acts occur on the premises; or

27 (h) Operate between the hours of 11:00 p.m. and 5:00 a.m.

28 **Sec. 33.5-9. – Rules and regulations.**

29 (a) The director may make such reasonable rules and regulations as may be necessary for
30 the purpose of administering and enforcing the provisions of this article and any other ordinances
31 or laws relating to and affecting the licensing and operation of massage businesses.

32 (b) It shall be unlawful for any person to violate a rule or regulation adopted by the director
33 pursuant to this section.

1 **Section 2.** Article II of Chapter 32 shall be amended by deleting the language stricken and adding
2 the language underlined to read as follows:

3 **Sec. 32-92.5. - Massage businessservices.**

4 Application and license fees for massage businessservices are as follows:

5 (a) Application fee \$500

6 (b) License fee, per year \$250

7 ~~(1) Massage therapist:~~

8 a. ~~(1) Registration fee \$35.00~~

9 b. ~~(2) License fee, per year \$35.00~~

10 ~~(2) Massage parlor:~~

11 a. ~~Application fee 500.00~~

12 b. ~~License fee, per year 200.00~~

13 ~~(3) Identity card holder:~~

14 a. ~~Application fee 25.00~~

15 b. ~~Card fee, per year 10.00~~

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17 COMMITTEE APPROVAL DATE: June 23, 2021

18 MAYOR-COUNCIL DATE: June 29, 2021

19 PASSED BY THE COUNCIL: _____ July 19, 2021

20 _____ *Steve Gilmore* - PRESIDENT

21 APPROVED: _____ - MAYOR *Mike Johnston* Jul 20, 2021

22 ATTEST: _____ - CLERK AND RECORDER,
23 EX-OFFICIO CLERK OF THE
24 CITY AND COUNTY OF DENVER

25 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____;

26 PREPARED BY: Marley Bordovsky, Assistant City Attorney DATE: June 29, 2021

27 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
28 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
29 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
30 3.2.6 of the Charter.

31 Kristin Bronson, Denver City Attorney

32 BY: *Kristin J. Bronson*, Assistant City Attorney DATE: Jun 30, 2021