

ORDINANCE 21-5757

AN ORDINANCE OF THE CITY OF BILLINGS, MONTANA, REGULATING MASSAGE AND SPA 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 AND CIVIL PENALTIES UPON CONVICTION OF A VIOLATION IN ORDER TO COMBAT HUMAN TRAFFICKING AND TO PROMOTE THE HEALTH AND WELFARE OF THE BILLINGS COMMUNITY.

WHEREAS, the City of Billings is a municipality with self-governing powers as provided by the Montana Constitution, Article XI, Section 6 and MCA sections 7-1-101, -102.

WHEREAS, the powers and authority of a local government unit with self-governing powers shall be liberally construed and every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority. MCA 7-1-106; see also Montana Constitution, Article XI, Section 4(2).

WHEREAS, the City of Billings is specifically empowered through MCA 7-21-4101 to license all industries, pursuits, professions, and occupations and to impose penalties for failure to comply with such license requirements; and to fix the amount, terms, and manner of issuing and revoking licenses. Further, the City Council may refuse to issue licenses when it may deem it best for the public interests.

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

WHEREAS, the City Council finds the purpose and intent of this article is to combat human trafficking, regulate and protect massage therapy businesses, and safeguard and promote the public health, safety and welfare of the citizens of Billings, while recognizing that massage therapy is a valuable health care profession that provides benefits to the residents of the City;

WHEREAS, the City Council further recognizes that, unless properly regulated, illicit businesses may operate under the false and misleading pretense of being massage therapy businesses, promote human trafficking and other unlawful activity, and pose a threat to massage therapy businesses and the quality of life in our community;

WHEREAS, the reputation and success of massage therapy businesses are denigrated and undermined by businesses that mask unlawful sexual activities and human trafficking by falsely posing as massage therapy businesses;

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

WHEREAS, MCA 37-33-405 of the Massage Therapy Licensing Act requires that the Board of Massage Therapy adopt rules 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)(a)(iv)(L); and

WHEREAS, neither the Massage Therapy Licensing Act nor rules adopted by the Board of Massage Therapy prevent the City from regulating massage therapy businesses, and the City wishes to exercise its regulatory powers as a self-governing unit of local government for the reasons stated above.

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

Section 1. That Article 7-1900 of the Billings, Montana City Code be created and added to read as follows:

Sec. 7-1901 Purpose and intent.

It is the purpose and intent of this article to regulate businesses that purport to be massage or spa facilities in order to safeguard and promote the public health, safety and welfare of the residents of the city, while recognizing that massage is a valuable health care professional activity that provides benefits to the residents of the city.

Sec. 7-1902 Definitions.

For 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 article shall have the following meanings:

- a. "Applicant" means an individual acting on behalf of a massage or spa facility to apply for a license.
- b. "Board" means the board of massage therapy provided for in MCA 2-15-1782.
- c. "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.
- d. "Control" means the legal power to direct or materially influence the direction of the management and policies of an applicant, licensee or controlling person, in any way.
- e. "Controlling person" means a person directly or indirectly exercising control or having the potential to exercise control of an applicant, licensee, or other controlling person.

- f. "DOLI" means the Montana Department of Labor and Industry provided for in MCA 2-15-1701.
- g. "Dormitory" means a location, other than a residence, where individuals working for a massage or spa facility live or engage in communal sleeping, as potentially evidenced by, but not limited to, witness statements or the presence of beds, bedding material, mattresses or cots.
- h. "Employee" means any person who performs any service at a massage or spa facility 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 the delivery goods to the licensee.
- i. "Erotic parlor" means a business or facility, other than sexually oriented businesses as defined in Sec. 27-1803 A., that entices clients through advertising or other business practices directed toward sexual desires, lust or passions.
- j. "For compensation" means the exchange of massage or spa services directly or indirectly for money, goods, services or other valuable consideration. Massage or spa services are provided "for compensation" even if offered nominally free but in conjunction with other services or goods provided for compensation.
- k. "License" means a license issued by the City of Billings authorizing the holder to operate a massage or spa facility in accordance with this ordinance.
- l. "Licensee" means the person holding a city massage or spa facility license.
- m. "License administrator" is the City Administrator or his/her designee, including but not limited to code enforcement officers.
- n. "Manager" is an individual authorized by the licensee to exercise overall operational control of the massage or spa facility, to supervise employees, or to fulfill any of the functions required of a manager by this article.
- o. "Massage or spa facility" means any business where any massage, massage therapy or spa services are practiced, administered, or advertised in exchange for compensation. The term "massage or spa facility" shall not include:
 - 1. A place of business where only one licensed massage therapist practices as a solo practitioner who is in compliance with all other applicable city code provisions as well as sections 7-1910 and 7-1911 of this article, and;
 - a) Does not use a business name or assumed name; or
 - b) Uses a business name or an 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
 - c) Does not maintain or operate a table shower as defined in this section.
 - 2. A place of business that limits its business to the following practices performed by persons who:
 - a) Do not claim expressly or implicitly to be massage therapists; and
 - b) Limit their work to one or more of the practices listed in MCA 37-33-404(4) or (5); and
 - c) Is recognized by or meets the established requirements of either a professional organization or credentialing agency that represents or

- certifies the respective practice based on a minimum level of training, demonstration of competence, and adherence to ethical standards.
3. Training rooms of public and private schools accredited by the state board of education or approved by the state regulatory body charged with the responsibility of approving private occupational schools.
 4. Training rooms of recognized professional or amateur athletic teams.
 5. Offices, clinics, and other facilities at which medical professionals in any of the practices listed in MCA 37-33-404(1) licensed by the state of Montana, or any other state, provide massage services to the public in the ordinary course of their medical profession.
 6. Medical facilities licensed by the state.
 7. Barber shops, beauty salons, and other facilities at which barbers, cosmetologists, and aestheticians licensed by the state that provide massage services to the public only in the ordinary course of those other licensed professions.
 8. Bona fide athletic clubs not engaged in the practice of providing massage services to their members or to the public for substantial compensation; for purposes of this definition, if an athletic club does not receive more than 10 percent of its gross income providing massages to its members or to the public such shall be prima facie evidence that it does not receive substantial compensation for such services.
 9. A place of business where a person offers to perform or performs massage therapy:
 - a) For not more than 72 hours in any six-month period; and
 - b) As part of a public or charity event, the primary purpose of which is not to provide massage therapy.
 10. Any other business specifically exempted under MCA 37-33-404.
 11. In accordance with section 7-1914, the license administrator may promulgate additional rules related to these exemptions, including rules that may result in a finding that a practice is no longer exempt.
- p. "Massage therapy" means massage therapy as defined in MCA 37-33-403(4).
- q. "Massage therapist" means a person who has fulfilled the requirements to obtain a valid license issued by the Board of Massage Therapy as defined in MCA 37-33-403(3).
- r. "Nudity" shall have the meaning defined by Billings Code Sec. 27-1803 A.
- s. "Operator" means any person who operates and is responsible for the day-to-day activities of a massage or spa facility.
- t. "Owner" means any person who has any direct or indirect ownership interest in a massage or spa facility.
- u. "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character.
- v. "Sexual Act" means sexual contact, sexual intrusion, or sexual penetration as defined in MCA 45-2-101(67) and (68).
- w. "Spa" means a business that offers or engages in personal services for compensation 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.

- x. "Table Shower" means an apparatus for the bathing or massaging of a person on a table or in a tub.

Sec. 7-1903 Other licenses, taxes, and laws generally.

The license and fee required by this article for massage or spa facilities replaces the regular business, occupation and profession tax normally assessed under Billings Code Sec. 13-423, but are in addition to any other applicable licenses, permits, or fees required by the city, county or state. A massage or spa facility licensed under this article shall comply with all other applicable ordinances and laws, including city zoning ordinances.

Sec. 7-1904 Massage or spa facility license required.

- a. It is unlawful for any person to operate a massage or spa facility in the City of Billings without a valid massage or spa facility license issued by the city as required by this article.
- b. It is unlawful for any individual to practice massage therapy for compensation in the City of Billings without first obtaining and maintaining a valid massage therapy 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. 7-1905 Application for massage or spa facility license.

- a. Any person desiring to obtain a massage or spa facility license shall make written application to the city finance department.
- b. The application shall be verified and accompanied by the application fee.
- c. Confidential information, as defined by MCA 2-6-1002, provided in the massage or spa facility license application that is specifically requested to be kept confidential by the applicant shall not be made publicly available except to the extent required by applicable law.
- d. All applicants shall provide the following information under oath:
 1. The full name and any aliases currently or formerly used by the applicant;
 2. The name, date of birth, place of birth, race (optional), sex (optional), address of physical residence, mailing address (if different), telephone numbers, and email address of the applicant;
 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, mailing address, email address, and telephone numbers of the proposed licensee and type of business organization

(individual, partnership, corporation, limited liability company, etc.). If the proposed licensee is a partnership, corporation, or limited liability company, the same information required of an individual applicant in subsections (1), (2), (3), (14), (15), (16) and (17) is required of all partners, officers, directors, managers, members, or persons owning or beneficially owning more than five percent of the common or preferred stock, real or personal property, or other indicia of ownership of the proposed licensee or the licensee's property;

6. The proposed address and name or names of the premises upon which the massage or spa facility for which a license is sought will be located and any name under which the licensee plans to conduct business ("dba" name);
7. The hours that the massage or spa facility will be open to the public and such times that the exterior door or doors may be locked as allowed under section 7-1911, if applicable;
8. A list of services to be provided at the facility;
9. The name, physical address, email address, and telephone numbers of the owner of the premises that the massage or spa facility is to be located and satisfactory proof of the right to possession of such premises;
10. A certificate of good standing from Montana, or other state of incorporation or registration, if the proposed licensee is a corporation, partnership or limited liability company;
11. Information as to whether the applicant, licensee, or any partner, officer, director, manager, member, or person owning or beneficially owning more than five percent of the common or preferred stock, real or personal property, or other indicia of ownership of the proposed licensee or licensee's property has, within five years preceding the date of application, been convicted of, or placed 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 or other criminal sanction is not an automatic bar to obtaining a massage or spa facility license);
12. Information as to whether the applicant, proposed licensee, or any partner, officer, director, manager, member or person owning or beneficially owning more than five percent of the common or preferred stock, real or personal property, or other indicia of ownership of the licensee or licensee's property 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 massage or spa facility license);
13. A statement as to whether the applicant, proposed licensee, or any partner, officer, director, manager, member or person owning or beneficially owning more than five percent of the common or preferred stock, real or personal property, or other indicia of ownership of the proposed licensee or licensee's property is a registered sex offender;
14. Information as to whether the applicant, proposed licensee, or any partner, officer, director, manager, member or person owning or beneficially owning more than five percent of the common or preferred stock, real or personal property, or other indicia of ownership of the proposed licensee 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 for the refusal, revocation, or suspension;
15. A state fingerprint background check in accordance with requirements described by the Montana Department of Justice website at <https://dojmt.gov/enforcement/background-checks/> (license renewals under section 7-1916 do not require another background check if the applicant certifies that all information contained in the background check remains unchanged from the previous year);
 16. A statement by the applicant that he or she is familiar with the provisions of this article, all statements made in the application are true and correct, and the applicant is in compliance and will remain in compliance with all requirements of this article while the license is in effect; and
 17. Any applicant intending to practice massage therapy must provide a copy of the massage therapy license issued by the DOLI pursuant to MCA 37-33-501.

Sec. 7-1906 Requirements to obtain massage or spa facility license.

- a. To receive and retain a license to operate a massage or spa facility, all applicants and licensees must meet the following requirements:
 1. The required fees as established by the city council must be paid;
 2. The application must be complete and provide all information required by section 7-1905;
 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 massage or spa facility as proposed, if licensed, must comply with all applicable building, fire, health, zoning and other city, county, and state laws. Any massage or spa facility operating out of a residence must meet all home occupation requirements of the Billings, Montana City Code.
 6. The applicant must provide a copy of the license issued by the DOLI pursuant to MCA 37-33-501 for any massage therapist who will be working as a massage therapist at the massage or spa facility.
- b. For applicants and licensees who fall into any of the categories listed below, the license administrator may conduct an investigation to determine whether a massage and spa facility license should or should not be issued or retained in the reasonable discretion of the license administrator. In exercising his or her discretion the license administrator shall consider the purpose and intent of this article; the extent to which the applicant or licensee has or has not complied with the requirements of this article; and any other factors reasonably relevant to the health, safety and welfare of the city and its citizens.

1. The applicant or licensee 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 purposes of this section the term "conviction" shall include entering into pretrial diversion or a deferred prosecution agreement, being placed on a deferred judgment, or being adjudged guilty upon entering a plea of no contest);
 2. The applicant or licensee is currently under indictment, charge, or information for any felony, financial crimes, or sexual offenses;
 3. The applicant or licensee is a registered sex offender with any federal, state or local government;
 4. The applicant, licensee, or any business associated with the applicant or licensee 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;
 5. The applicant is applying for a license to locate a massage or spa facility in a location where the license for a previous massage or spa facility has been revoked or suspended for cause within the last 24 months; or
 6. The character, record, or reputation of the applicant or his or her agent or principal or of the licensee is such that a potential violation of this article may occur if a license is issued.
- c. If the proposed or existing licensee 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 or having a beneficial interest in more than five percent of the stock, real or personal property, or other indicia of ownership of property of the organization.
- d. The license administrator shall be empowered to place reasonable conditions and restrictions upon any massage or spa facility license. The licensee shall have the right to appeal any such conditions or restrictions in accordance with the provisions of section 7-1913(b).

Sec. 7-1907 Review by other departments.

Prior to the issuance of any massage or spa 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 7-1906 and any other requirements of this article. For this section 7-1907 the Police Department shall only provide information and shall not approve or disapprove of any application.

Sec. 7-1908 Issuance.

- a. If after any necessary investigation, the license administrator finds that the applicant, licensee, and each of the persons required to be listed in the corresponding license application meet the requirements of this article and any other requirements of the Billings, Montana City Code, then the license application shall be approved within 30 days following receipt of the completed massage or spa facility license application. In the event of a denial, the license administrator shall explain in writing the reason for the denial.
- b. The license administrator may place reasonable conditions or restrictions upon any massage or spa facility on a case by case basis. The licensee shall have the right to appeal any such conditions or restrictions in accordance with the provisions of section 7-1913(b).

Sec. 7-1909 Temporary license.

The license administrator may issue a temporary massage or spa facility license upon receipt of a complete license application involving the sale or change in ownership of a business. Such license shall be issued for 30 days, and renewed every 30 days until approval or denial of the massage or spa facility license.

Sec. 7-1910 Prohibitions during operation.

It shall be unlawful for any licensee, owner, operator, manager, or employee to:

- a. Operate the facility in violation of any provision of this article or without a valid massage and spa facility license or with such 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. Except as provided herein, permit a licensed massage or spa 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 or spa facility operated as a home occupation, as defined by Article 13 of Billings, Montana 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 sexual response or desire of either party. In no case shall the employee intentionally touch, offer to touch, or agree to touch 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 nor permit any client nudity without draping and treatment in a way that ensures the safety, comfort, and privacy of the client.
- 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 employ language in the text of any advertising that would reasonably suggest to a prospective client that any service is available other than those permitted under this article, nor advertise in a manner that is inaccurate, deceptive, or sexually suggestive, either explicitly or implicitly.
- h. Use or possess for massage or spa services provided for compensation, adult-oriented merchandise of a sexual nature, including sex toys, sexual aids, vaginal or anal lubricant, or any contraceptive item, in any part of a massage or spa facility, provided that nothing in this subsection shall restrict use or possession of such items for non-commercial purposes in a private residence, including one used for a home occupation in accordance with Article 13 of Billings, Montana City Code.
- i. Permit any individual, including a client, student, contractor, or employee, to engage in or solicit any sexual contact or sexual intercourse, as those terms are defined in 45-2-101, MCA, with a client, when such act or solicitation is related to the practice of massage therapy or spa services in the massage or spa facility.
- j. Permit any person to make an agreement with an employee to engage in any sexual conduct for compensation, whether consensual or otherwise, in the massage or spa facility or at a different location, in violation of Billings, Montana City Code or state law.
- k. Refuse to provide access to government inspectors or law enforcement personnel who provide proof of identity, conceal persons in the facility, refuse to provide identification to inspectors or law enforcement, remain behind locked doors in the facility during an inspection, or elude or attempt to elude inspectors or law enforcement by exiting side or back doors.
- l. Provide massage therapy or permit anyone to perform massage therapy without a valid massage therapist license issued under Billings city code and/or state law.
- m. Operate an erotic parlor within the City as defined in this article.

Sec. 7-1911 Requirements during operation.

Every massage or spa facility licensee shall:

- a. Maintain a current list of employees and independent contractors on site with start dates of employment or contracted service, full legal name, nationality, date of birth, place of birth, home address and telephone number, employment position, passport number (if a foreign national), date first began service, and the date when services were terminated, if applicable.
- b. Maintain a copy of each massage therapist's Montana license issued pursuant to the Massage Therapy and Licensing Act.
- c. Shall keep a complete set of books and records for the business on site at the facility. The records shall also include a log of all massage therapy administered

at the facility. The log shall contain the following information: date, time and type of each massage therapy administered, and name of employee administering the massage therapy. The log shall be retained for a minimum of one year following any massage therapy. The log and other books and records shall be subject to inspection upon request by the inspector during normal business hours. Any protected health information may be redacted from the log and books and records provided subject to this article.

- d. Operate or conduct business under only the designation specified in the license.
- e. Keep all interior and exterior doors unlocked while the massage or spa facility is open for business except as follows:
 - 1. Restroom doors may be locked.
 - 2. Exterior doors may remain locked if permitted by applicable fire, building and zoning codes and if the facility is occupied by a single employee or independent contractor.
 - 3. Internal doors may be locked to protect confidential client or business information.
 - 4. A variance from the requirements of this subsection may be granted in the discretion of the license administrator upon written request of the licensee and evidence demonstrating that a variance is necessary for the security of employees, contractors, or property of the licensee and would not be inconsistent with the purpose and intent of this article.
- f. Immediately open any locked door, including any exterior door, upon request by an inspector or law enforcement officer who provides proof of identity. However, an inspector or law enforcement officer may not interrupt a treatment session that is in progress, except that a treatment session lasting 2 hours or more may be interrupted.
- g. On all massage and spa facilities with windows or other glass adjacent to an entrance, be required to have and maintain a sufficient portion of clear glass that 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 variance from the requirements of this subsection may be granted in the discretion of the license administrator upon written request of the licensee and evidence demonstrating that the variance is reasonable in light of the cost of compliance or other factors and would not be inconsistent with the purposes and intent of this article.
- h. List the physical address of the facility in any advertisement.
- i. Provide a written list of prices for all services (through signage or written materials) of the massage or spa facility available to all prospective customers.
- j. Operate only between the hours of 6:00 a.m. and 10:00 p.m.
- k. Upon the sale or transfer of any ownership interest in the stock, membership interest, assets, or other indicia of ownership of a massage or spa facility, the license issued pursuant to this article shall be null and void, and a new application and license shall be required.

Sec. 7-1912 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 article.
- b. Each massage or spa 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 law enforcement officer may enter a massage therapy business at any time during business hours to determine compliance with any law under that person's jurisdiction, including but not limited to this article or provisions of the Massage Therapy and Licensing Act.
- d. 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.
- e. Each massage or spa facility shall make the complete set of books and records and log of all massage therapy administered at the facility as required by this article available for inspection without unreasonable delay. Any protected health information may be redacted from the log and books and records provided subject to this article.
- f. Upon request, all owners, managers, massage therapists, employees, contractors or persons occupying the facility other than clients shall present identification and shall not elude identification.

Sec. 7-1913 Denial, suspension or revocation of license.

- a. The license administrator may immediately suspend a massage or spa facility license with a hearing to be scheduled within thirty (30) days when the director finds that:
 1. The licensee has violated any of the provisions of this article; or
 2. That the information set forth in the application utilized to obtain a massage or spa facility license was materially inaccurate or incomplete or likely obtained through fraud, deceit or misrepresentation; or
 3. The state has revoked the massage therapy license of the licensee, the applicant, the manager, or substantially all of the employees or contractors of the facility providing massage or spa services; or
 4. The licensee willfully failed to disclose any information as required in section 7-1905; or
 5. The licensee knowingly permitted a person to perform massage therapy when licensee should reasonably know that such person is not licensed in accordance with section 7-1904 and MCA 37-33-501 of the Massage Therapy Licensing Act when such license is required; or
 6. A pattern of credible facts emerges that the facility is attempting to operate an erotic parlor to engage in a prostitution enterprise or to commit other

crimes whether or not there is a violation of any other specific law, rule, or code; or

7. The licensee failed to permit an inspection in accordance with section 7-1912 any time the facility is occupied or open for business.

- b. Any person aggrieved by any decision of the license administrator concerning the issuance, refusal to issue, suspension or revocation of a massage or spa facility license may appeal that action by filing a written notice of appeal with the city clerk within twenty (20) days of personal service or mailing of the written notice of the license administrator's decision, with the manner of service to be determined in the discretion of the 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 make an initial determination of 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 the appellant in the written appeal, as submitted. The rules of evidence and civil procedure shall not apply to such a hearing. The original decision of the license administrator shall remain in effect during the period of appeal.

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 additional hearing shall be permitted. The City Administrator may affirm or reverse the hearing officer decision. The decision of the City Administrator is final.

Any massage or spa facility license issued under this article is subject to suspension or revocation by the license 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 license in the first instance.

When any massage or spa facility license has been revoked for violation of this article, no massage or spa facility license shall be granted to the following persons for a period of one year for the operation of a massage or spa facility in the premises described in the revoked license: the person who held the revoked license; the licensee's spouse; any person who held or holds more than a five percent ownership interest in any corporation, partnership, limited liability company

or other organization that holds or held the revoked license; and any corporation, partnership, limited liability company or other organization in which any person who holds or formerly held the revoked license has more than a five percent ownership interest. Any additional massage or spa facility license for any other massage or spa 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 violation of this article or by a corporation, partnership, limited liability company, or other organization in which that person holds a controlling interest.

Sec. 7-1914 Supplemental provisions.

The license administrator, at his or her discretion, may promulgate rules for:

- a. Approving professional organizations or credentialing agencies pursuant to section 7-1902(o);
- b. Verifying the exempt status of a business or facility in accordance with section 7-1902(o) and the intent of this article;
- c. Exempting additional practices from the requirements of this article; and
- d. Determining that a practice is no longer exempt under section 7-1902(o) or any other provision of this article if there is a continued pattern of criminal behavior, including sexual misconduct, or criminal intent that is related to human trafficking disguised as a legitimate exemption.

Sec. 7-1915 Effective date.

The requirements of this article shall be effective immediately upon the effective date of this ordinance. Any facility subject to the requirements of section 7-1904(a) shall submit an application pursuant to section 7-1905 within thirty (30) days of the effective date of this ordinance.

Sec. 7-1916 Renewal application.

Every holder of a massage or spa facility license required by this article shall apply to renew 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 licensee shall submit the application at least 45 days before the license expiration date. If the licensee fails to timely submit a complete application (including updated information and renewal fee), the current license shall be null and void on the expiration date stated on the license.

Sec. 7-1917 Land use and zoning requirements.

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

Sec. 7-1918 Massage facility owner and operator responsibility for employee acts.

For the purpose of determining compliance with this article, any owner, operator, or licensee of a massage or spa facility shall be responsible for the conduct of all employees, independent contractors, unpaid volunteers and other persons who provide massage therapy or spa services on the premises or through arrangements with the massage or spa facility. All persons working in or for the massage or spa facility shall be deemed to be under the control of the owner, operator and licensee, and any act or omission of such persons constituting a violation of this article shall be deemed to be the act or omission of the owner, operator, and licensee for purposes of enforcing this article.

Sec. 7-1919 Violation and penalty, affirmative defense, and remedies.

- a) Any person who violates any requirement of section 7-1904 and 7-1910 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 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.

It shall be an affirmative defense under this article for an employee that such employee was under duress or coerced into violating a provision of this article. This affirmative defense is not available to any person who created or materially participated in creating the duress or coercion of another person that resulted in a violation of section 7-1904 or 7-1910.

- b) 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.
- c) Any other violation of this article shall be a municipal infraction and persons found to have committed a violation shall be subject to civil penalties as set forth in section 18-1304 of this Code. Each such person 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.
- d) Any massage or spa 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 penalties as provided in section 18-1304 and shall further be subject to civil action to restrain or abate the nuisance 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. 7-1920 Remedies cumulative.

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

Sec. 7-1921 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 that 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 sixty (60) days after second reading and final adoption as provided by law.

APPROVED on first reading this 12th day of April, 2021.

ADOPTED and APPROVED on second reading this 26th day of April, 2021.

CITY OF BILLINGS



BY: William A. Cole
William A. Cole, Mayor

Attest:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk