



SCAPPOOSE *Oregon*

MONDAY, FEBRUARY 6, 2023
CITY COUNCIL MEETING AGENDA
Regular meeting 7:00 pm
COUNCIL CHAMBERS
33568 EAST COLUMBIA AVENUE
SCAPPOOSE, OREGON 97056

ITEM AGENDA TOPIC	Action
Call to Order	
Pledge of Allegiance	
Roll Call	
Approval of the Agenda	
Public Comment ~ Items not on the agenda	
Please sign a speaker request form and turn it in to the City Recorder along with any written testimony	
1. Consent Agenda ~ January 3, 2023 City Council meeting minutes; and January 17, 2023 City Council meeting minutes	
2. Council Liaison Appointments	
Mayor Backus	
<u>Old Business</u>	
3. ORD 910: An Ordinance relating to massage businesses, creating Scappoose Municipal code chapter 5.20, Massage Facilities	Public Hearing/First Reading
Chief Steven Lougal; Assistant to City Manager Isaac Butman	
<u>New Business</u>	
4. Crown Z Trail Interpretive Signage	Report
Columbia County Commissioner Casey Garrett	
5. CGI Video	
City Manager Alexandra Rains; Assistant to City Manager Isaac Butman; Nicole Rongo	
6. Resolution 23-01: A Resolution establishing background check fees for the City of Scappoose Police Department	Public Hearing/Approval
Assistant to City Manager Isaac Butman	
Announcements – information only	
7. Calendar	
8. Updates: City Manager, Police Chief, Councilors, and Mayor	
Adjournment PLEASE NOTE: IF YOU WOULD LIKE TO SPEAK WITH CITY STAFF ABOUT A PARTICULAR AGENDA ITEM, PLEASE CALL CITY HALL at 503-543-7146, EXT. 224, NO LATER THAN 3:00 PM ON THE DAY OF THE MEETING.	



SCAPPOOSE

Oregon

**TUESDAY, JANUARY 3, 2023
CITY COUNCIL MEETING
REGULAR MEETING 7:00 PM
COUNCIL CHAMBERS
33568 EAST COLUMBIA AVENUE
SCAPPOOSE, OREGON 97056**

Call to Order

Mayor Elect Backus called the meeting to order.

Pledge of Allegiance

Oath of Office of Councilor Holmes and Councilor Lafrenz ~ Administrated by Judge Todd

Congratulations Councilor Holmes and Councilor Lafrenz!

Oath of Office for Mayor ~ Administrated by Judge Todd

Congratulations Mayor Backus!

Roll Call

Joe Backus	Mayor	Alexandra Rains	City Manager
Megan Greisen	Council President	Steven Lougal	Chief
Peter McHugh	Councilor	Chris Fluellen	Lieutenant
Tyler Miller	Councilor	Dave Sukau	Public Works Director
Kim Holmes	Councilor	Laurie Oliver Joseph	Community Development Director
Andrew Lafrenz	Councilor	Chris Negelspace	City Engineer
		Susan M. Reeves	City Recorder
Peter Watts	Legal Counsel	Isaac Butman	Assistant to City Manager
		Huell Whitehaus	Assistant to Public Works Director

Anna Del Savio South Columbia Spotlight

Remote: Paul Fidrych (left at 8:28pm); Beth Rajski; Lisa Hoffman (left at 7:54pm); Lauren L; RK (joined 7:21pm).

Excused: Councilor Santiago

Approval of the Agenda

Council President Greisen moved, and Councilor Miller seconded the motion to approve the agenda. Motion passed (6-0). Mayor Backus, aye; Councilor Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

Elect Council President

Councilor Miller nominated Councilor Greisen for Council President.

There were no other nominations.

Councilor Miller moved, and Councilor McHugh seconded the motion to nominate Councilor Megan Greisen for Council President. Motion passed 6-0. Mayor Backus, aye; Councilor Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

Public Comment

Joel Haugen and Marisa Jacobs, Scappoose, handed out a document to Council and staff.

Joel Haugen stated good evening, Council and welcome to 2023. He has handed Council and letter from his Attorney Christopher P Koback, Hathaway Larson LLP. Mr. Koback has outlined numerous procedural errors and substantively flawed decision making at the Buxton Farm Subdivision local land use proceeding. They are listed in detail and Marisa will summarize for you not because he has a cold.

Marisa Jacobs did not give public comment, she was the voice for Joel Haugen as his voice was not well. She simply read the words within the document he prepared, the words she read were not and are not her opinions or her words.

There were two major procedural errors. One: Council violated Mr. Haugen's right to provide written evidence and testimony of the December 5th, 2022 hearing and during a required open record period. Scappoose Municipal Code, section 17.162.090 list the approval authority responsibilities. Section C discusses the Planning Commission's process and states that the Planning Commission shall conduct a public hearing in the manner prescribed by Chapter 126. Like chapter 162. Thus, every quasi-judicial hearing must comply with all of Chapter 162. This did not occur with this application. Two: Council improperly reopen the record to allow the developer to modify the application without allowing other participants to provide evidence and testimony on the new proposal. Staff allowed the applicant to modify the application during the December 12, 2022 Council meeting after the record was improperly closed. Staff did not permit any participant to testify or present evidence on the modification. To reopen the record for the applicant, the City is required to reopen the record to all other participants. Next, the decision is substantively flawed. One: Council failed to make findings that address the issues

opponents raised and evidence they submitted. LUBA has consistently held that when a party raises an issue over whether an application complies with relevant criteria, the decision maker must address those issues and findings. The Planning Commission never addressed any of the substantive issues raised by opponents that demonstrate a lack of compliance with criteria. They immediately adopted staff proposed findings that were completed before opponents raised those issues. Similarly after opponents testified in detail to Council identifying criteria that was not satisfied, Council failed to adopt any findings of its own. Council simply adopted the same staff findings that never mentioned the opponent's testimony and evidence. There are eight findings of error to the criteria that I will briefly summarize: A. lot size requirements. The applicant was not able to meet the lot size requirements in R1 zone, thus requesting an exception to those standards. Because the application relied on requesting an exception or a waiver to the standards, the law allows you to apply discretion in deciding whether to approve the request. The question to ask is whether the proposal and the decision results in lots that are compatible to the surrounding area and consistent with the objectives for requiring larger lots in an area prone to flooding. There are no findings that address this critical issue. The staff report superficially mentions lot sizes, but never addresses the opponent's issue. The Planning Commission and Council adopted the same staff findings that never mentioned the opponent's testimony and evidence. B. The decision allows private development in the floodplain inconsistent with Scappoose code. The applicant's plan is to use the permitted development in phase one to generate fill that will be used to raise the floodplain level in areas subject to the more restrictive 20,000 lot size requirement. Because the private ponds are not permitted development in the floodplain, the applicant cannot demonstrate that the permitted development will allow it to raise the floodplain enough to obtain the formal and final FEMA revision. C. Council did not make any findings on critical flaws in the stormwater treatment proposal. Another issue is that raised at Council hearing is whether the private facilities can be properly maintained as the applicant proposed the detention ponds if they are not maintained and fail to function the default is that the untreated runoff is released directly into the Creek. HOA's are administratively dissolved on a regular basis, thus the City will need to take action against an unincorporated group of owners, most likely leaving the burden on the City as a whole. D. there are no findings addressing issues raised over the proposed phasing plan. The decision is relying on the development of private stormwater ponds in phase one to elevate the floodplain. However, the applicants plan to raise the floodplain is not allowed in Scappoose Code and therefore cannot be approved. But it was. So what happens when phase two is not approved by FEMA because the developer was unable to raise the floodplain? What's Plan B? This was raised by opponents and not addressed. The three remaining decision flaws, see E. Council failed to even consider the more conservative analysis of flood risk factors presented by opponents and F. that application fails to satisfy block length and connectivity standards and G. the Council failed to make findings addressing the argument that Eagleston Lane will function as a cul-de-sac but fails to satisfy the standards for cul-de-sac. All three impact the health and safety of the existing and new inhabitants for this development, and the decision completely ignores fire code Table D 103.4. Mr Kobach is an expert land use attorney. The letter outlines in detail the numerous procedural errors and flaw decision making in this process. Therefore, Council should withdraw the decision for reconsideration. Council does not need to live with an approved development and its inevitable negative impacts on the City. Council has the absolute

and unrestricted right to withdraw the decision to reconsider it should it be approved. Refer to case Oregon Pipeline Company LLC versus Clatsop County of 2012.

Mayor Backus stated that has been five minutes and you'll have to stop.

Steve Collard, Scappoose, stated good evening and welcome new Councilors. He explained his comments are going to be brief. It's a continuation of Mr. Haugen's statement, which he happens to agree with. It's not much left to it, so. Council does not have to live with the approved development and it's inevitable negative impacts on the City. Council has the absolute and unrestricted right to withdraw the decision to reconsider whether it should be approved. Refer to Case Oregon Pipeline Company LLC V Clatsop, County of 2012. In that case the Courts confirmed that at any time before this record is due to be delivered to LUBA, the governing body of the local jurisdiction may withdraw a final land use decision for reconsideration. In that case, the new Council withdrew the decision for the purpose of reconsidering and denying the application. Your city attorney can advise you that you do not have the right to withdraw the December 19th, 2022 decision, nor can he advise that such a decision exposes the city to mandamus action for violating the 120 day period in ORS 227.178.

This ends Mr. Koback's summary. The letter provides details for all points in his letter. I urge you to do the right thing, move to vote to withdraw the decision to reconsider tonight and instruct staff to pause all activities on this development, restore faith in our citizens and our process.

He thanked Council.

Pat Anderson, Scappoose, explained back in the December 12th City Council meeting, she brought up an issue that she found regarding this storm water facility that was over in the Steinfeld subdivision. So, for all the new Council members and for the mayor, she will briefly kind of recap what was because she would like to address that. First of all the stormwater facility is taken over severely overgrown with blackberries, grass is 3 to 4 foot high, there's weeds and debris, both organic and trash that are there in the retaining pond. That the blackberries are so dense that you can't see through it. It's growing on retaining walls and on the fences. Just out of curiosity, she went and looked on the City of Scappoose website and she found a recorded document regarding the Steinfeld West Subdivision recorded agreement that was dated back from 2007. She stated remember that date 2007. Basically, to recap what that obligation is, there's a maintenance obligation that falls on that HOA, they're called the code declarants, and they'll maintain that facility. It stipulates three conditions that the storm water facility should be mowed regularly to be maintained a maximum grass height of six inches or less. Access to the storm water facility: access gate shall remain free of obstructions at all times, allowing access by the city of Scappoose Public Works Department for inspection, maintenance and repair, and third, debris that accumulates along the fence within the stormwater facility shall be removed monthly. So that's the maintenance obligation. Under the second point there's facility inspections. HOA shall inspect the facilities for maintenance and

deficiencies in the above maintenance requirements and minimum of twice each year. Except once between September or October, and the second would be April to May. Third, there's city inspections. The City has the right to enter the property at any time to inspect the facility and to make determinations maintenance thereon as necessary or if deficiencies exist or need to be corrected. In any such case, the code clearance will be notified by the City in writing of said noted deficiencies directed to make corrections. So, the point of that was those three things have all failed. And so, the three points that she made in my statements on the 12-12 was that this recorded document sets the precedence of future HOA self-regulation. It seems that the recorded document does nothing to ensure that the HOA is acting responsibly and there is zero governance in place to enforce it. Since the stormwater system has a potential to affect more than just the HOA, it was very disconcerting that the City would relinquish control and accountability to an unelected entity, the HOA and then permitting the HOA to self-regulate and be responsible for infrastructure that potentially impacts the community outside the HOA's boundaries just didn't make sense. So, she was asking the City Council that time or the City to take some sort of action on that. So, she reached out to Ms. Rains in an e-mail, and asked just what what's the follow up on that? So, Ms. Rains was very quick in her response, which she appreciated, and she would like to just kind of address her response because she does still have some concerns. Ms. Rains indicated that the city engineer did conduct a site visit and did some research, she is just kind of recapping this and then in her e-mail, she also reiterated what was in the in the document that was recorded, which she has already gone over. So Ms. Rains states in her last paragraph that since we were first made aware of this issue, which she assumes was on 12/12 when she brought it up, she states quote, we have discovered that the property was not transferred to the HOA in accordance to the land use decision and will be reaching out to the property owner to have them take corrective action as soon as possible. That's the end of the e-mail. So, it's been fifteen years that this stormwater facility went unmaintained. It was under the radar. It was very disappointing in the response that she got, that even though they have reached out to the owners to take corrective action, she felt that the City also has as co-owners of that facility that they should also take some, have some sort of steps in place for risk mitigation. Our governance process put in place by the City of Scappoose, that would not allow this to fall through the cracks. Again, the City seems to again have shifted the responsibility back to the HOA, who has failed.

Mayor Backus stated that is five minutes.

Pat Anderson stated thank you.

Councilor McHugh stated he has a statement to make. First of all, he did receive a copy of this report that you have, before this meeting and so he has had a chance to read it. He doesn't know if anybody else got a copy or not, but he does think there's enough substance in there that we need to deal with it in some manner. He is not sure what the manner is, but he does think we need to address it as a Council to see what we want to do with this information.

Council President Greisen asked Councilor McHugh, what is he referring to?

Councilor McHugh replied it is the report from Attorney Koback. He stated he is not an attorney. He doesn't know all of this information here, what merit there is to it, but there is enough there that he thinks we need to address it as a Council to see what we want to do with this information. His suggestion is maybe after Council has read this report and maybe looked at Joel's appeal to the Land Use Board of Appeals that we contact the Mayor or somebody and give them our suggestions on where we think we should go from here. Talk about it in a work session or talk about it as an agenda item, he doesn't know but he does think that we can't just receive this information and do nothing.

Councilor Miller explained in response to what Councilor McHugh just stated he thinks it would be prudent for City Legal Counsel to review the documents that were given to us this evening and then we basically need the City's Legal Counsel to do an analysis on that to see if they concur and then they can advise us on their legal opinion and then we can go from there.

Mayor Backus asked how would the process work, is this an executive session?

Legal Counsel Peter Watts explained we could do it in a variety of ways. He hasn't seen the letter. He stated if he believed that there had been any substantial error or omissions in the process, because this has been raised a number of times, he would have said so. He hasn't seen a LUBA appeal, so he doesn't know if the LUBA appeal has occurred or not.

Mayor Backus asked did he hand you either one of these?

Legal Counsel Peter Watts replied no, he doesn't have either of those materials.

Mayor Backus replied it is a letter and a notice of intent to appeal.

Legal Counsel Peter Watts explained the way that LUBA works is the petitioner has 21 days in order to file a notice of appeal, at which point the city is responsible for coming up with the record, which is every document that we've received in chronological order, beginning with the first document that we received. What he heard and doesn't have, and maybe the Koback letter is a part of this, is there is a process at LUBA where you can do what is referred to as a voluntary remand, which is not something that he would recommend at this point. He stated the record is what it is. We have had a lot of complications with the record because we had people trying to submit documents after the record was closed. We have people raising new arguments despite the fact that we had stated that it was raise it or waive it in front of the Planning Commission. He stated it is not just the rights of the City it is the rights of the opponents, who are apparently appealing. He stated usually he would have a stamped copy with the LUBA number on it, he guesses he is assuming that this have been filed with LUBA. He stated as complicated as this process was, legally speaking he is comfortable with where we are at. He stated the Land Use Board of Appeals handles these and the applicant has their rights, the City has their rights, and the opponents have their rights, and his preference would not further muddy the waters. He stated if he had been concerned with those errors or omissions or thought that staff hadn't addressed them, he would have said so at the time because he

hates losing. He thinks that this process will play out as it plays out and LUBA will decide what they decide.

Mayor Backus stated hearing Councilor McHugh's concerns and Councilor Millers recommendations he does agree that he thinks more needs to be done, at least looked into. He would just like to know more about this, our exposure, our rights, and what are our options.

Legal Counsel Peter Watts replied our options are going to be whatever the parties agree to. He explained it is possible to stay a LUBA appeal, it is not uncommon but that would require the consent of all parties. He explained he is happy to read the Koback letter, he will want to do that. He stated listening to it on the fly, it sounds like things that were already raised and things that were dealt with in the staff report. He stated we've tried to be as transparent as possible about this process and what people could and couldn't not consider and when they could and could not do things.

Council President Greisen stated she thinks we're in a pretty unique situation that half the people sitting up here are new. She asked Legal Counsel Peter Watts what is he able to communicate to us as a group, let's say via email in terms of facts, in terms of we received this on this date and it couldn't be accepted, etc., etc.

Legal Counsel Peter Watts replied we could do this in an executive session. He explained there is an executive session that deals with pending or threatened litigation and we are certainly within that. He explained throughout this process, his recommendation to staff has been that we be as transparent as possible. He stated it seems like there are a lot of people that... and again there is a difference between the City Council hearing something legislatively, which means you can consider anything within the known universe and really you don't have to make a decision based on the record through we always would hope that you would at least in part versus quasi-judicial as well as your ability to do things or not do things and this is very unique in that this was decided by the last City Council we had. We have a City Councilor who has recused herself from the process so it would be fifty percent of the Council has not been through the process. He stated what he would say is he is comfortable with where we are and there is always some legal risk.

Council President Greisen stated she was part of the process before so she is up to speed on all those things that have been written in this letter and came before that and everything. She would like to offer some space up to those that are new because they are getting roped into something that happened before and then we need to decide are they capable of.....

Legal Counsel Peter Watts replied this is a new City Council and he advised the City Council that he staffs. He thinks that the record is already..... He means there are people who simply didn't respect the rules of the quasi-judicial land use hearing as far as ex parte communication frankly as far as submitted documents. He stated based on what he has seen so far his guess is that a lot of people had ex parte communication, both former Councilors and new Councilors and that all would need to be disclosed as part of this if we're doing a hearing. He explained the record is

already is robust. These arguments have already been made, they were dealt with by the former City Council and in some respects in the event that there is an error or omission, and it would be remanded by LUBA that would be an easier and cleaner process to start over than trying to voluntarily remand something. That is his opinion at this time. Council can do what you'd like. He stated if we are going to do that, he thinks we would want for now. He would want to have a conversation with Chris Koback and he would also want to have a conversation with Garrett.

Councilor Miller stated he is just going to offer a solution to Council, we have this letter dated December 29, 2022 from Mr. Haugen's Legal Counsel, which is Christopher Koback, as you said earlier. There's very clear basically allegations in this letter. He asked would it be wise and comforting to this Council for City legal counsel to go through and analyze these arguments and allegations and write us a legal opinion on whether or not these are likely to prevail in front of a LUBA appeal or not? He thinks we need to stick with specially what is alleged in this letter and determine whether or not this is likely or not likely, how it is going to play out in a LUBA appeal. Because what he doesn't want to have happen is this be kicked down the road and then find out, he is not ignorant to everybody making mistakes and he is open minded so, we have very specific allegations here, should we review these and make sure that we didn't have any oversights and this Council feel confident that there was no oversight because the last thing that he wants to have happen is the City staff waste their resources continuing down this road when perhaps there is something here. He is not saying that there is, but he is saying, his opinion is, that this may warrant a review on these specific allegations.

Legal Counsel Peter Watts replied he would be happy to do that.

Mayor Backus explained he does agree. He replied he agrees. He stated if this comes back then the new Council will be part of it. He stated without doing our due diligence and at least revisiting this and see if there's something there to look at. He stated by just quickly seeing this, we have a little bit of time to do that. He just doesn't know the process, the best way to the feels we should do our due diligence and at least visiting this and seeing if there's something there to look at. He would like to maybe get a feeling then from the rest of the Council of possibly going over each one of these, or what kind of meeting.....

Councilor McHugh stated he thinks our Attorney's advice, if he understood correctly, is if we were to have an executive session to review this, he thinks would be maybe the best way to go about it. That is his thought on it anyway.

Councilor Holmes asked if an executive session were to take place and we decided that there were some omissions or error in the process, which is obviously important for all parties in a quasi-judicial situation, what would be our next step? She asked is there a way to work with the parties relating to this LUBA appeal or has the train left the station once it is filed?

Legal Counsel Peter Watts replied LUBA actually has a seldom used mediation, a mediation program opportunity. He doesn't know whether that is something the parties would be

interested in or not. He stated again they have 21 days to appeal, once we receive the notice of appeal, we prepare the record. He stated he thinks staff has been aware that this is something where there was a threatened appeal throughout so he thinks they have been doing that groundwork on the front end. At that point then the people appealing it have the opportunity to review the record and they have an opportunity to say that there's and so does the applicant, to say that something should be in the record or shouldn't be in the record. We can all either agree that it should or shouldn't be on the record in the record but if we don't then LUBA gets to decide at which point proceedings are prepared and then oral arguments occurs, and it's all designed to happen within less than a six-month period depending. He explained he certainly has been involved in cases where they remanded something. He has also had LUBA cases where seven errors and omission, in one case he is thinking of, were alleged and we won on all seven. He stated it is hard to know exactly, you know there is no certainty in the law but he thinks that if at any point in the process he had become uncomfortable with anything that was within our control, because a lot of things that happened were outside of our control and despite his best warnings there was nothing he could do about it, but if it was anything that was within our control he certainly would have flagged it. He thinks if the applicant would have been concerned about any of these things they would have agreed to extend that 120 day clock which we were really coming up against and they did they weren't. So that was kind of his analysis to the time and he hasn't seen anything change his analysis but he is happy to review the letter and happy to schedule an executive session so that we can have to the extent that we need to have a more frank conversation. He is happy to do that. Again, given everything with this applicant, his hope is to be as transparent as possible just as to what we can do and what we can't do and then as long as Council is aware of the legal risk associated with different course of action, whenever you decide is certainly something he respects.

Councilor Miller stated this letter basically tells us what they are going to appeal. He still goes back to he thinks it is important to go through each one of these and see if City Legal Counsel concurs with what they're alleging. He doesn't want to waste anybody's time going down a path if we read something or say yeah this is pretty black and white. He stated why would continue down a path and waste people's time. He stated his comfort level is that we know specifically what the allegations are, they have written them out here very clearly for us, is that our Legal Counsel reviews that and determine if we complied with everything, if there's no issues here or if there is and then Council be briefed on that so that they would know what exactly we're looking at.

Council President Greisen stated during that time should would like Chris and Laurie to be a part of that process in educating and filling in the Council. She asked staff if they feel most comfortable responding to these allegations in a written form?

Legal Counsel Peter Watts replied if we want to get into this he would like to schedule an executive session before the next City Council meeting. He explained he will confer with Laurie and Chris and we can have the conversation. He stated again, there may or maybe be an appeal. We are discussing a decision that may or may not be appealed right now.

Mayor Backus stated if we were to schedule an executive session he is sure this would have a stamp on it by the time we would meet. He stated it has dates on it as of today, so he is assuming it was filed today. He asked if it has been filed.

Joel Haugen explained Mr. Koback mailed this certified mail to LUBA today. He stated if you are willing he has a simpler solution here.

Mayor Backus replied we are good, thank you.

Councilor Lafrenz stated it sounds like it is the first time most of us have seen this and he personally would like some time to look at this.

Mayor Backus stated he just feels doing our due diligence, we have a little bit of time, especially with some new Councilors. He would really like to make sure that we are very confident especially if we've been given this and we fail to act on it and some of these things are legitimate and we had the opportunity. He thinks by at least discussing it potentially within a week before our next meeting in executive session. If Legal Counsel in writing come back answering each one on your feeling of how we have covered ourselves. He asked Council is that what he is sensing?

Councilor Holmes stated she would say that is an important step. She stated if it has been filed and we go through that exercise of going through what has been claimed here in the appeal. She asked our recourse change course is what?

Legal Counsel Peter Watts replied we can voluntarily remand at a point prior to the record being submitted.

Councilor Holmes replied which would be?

Legal Counsel Peter Watts replied like a month. He explained once this appeal has happened there is a Statute as well as a LUBA rule that will allow us to do a remand. At that point we could open things back up. He would need to do a little bit of research as he has only used that once and would want to confer with Council that is an option that might be available to us but moving to reconsider it at this meeting is not. We do not have the applicant here, nobody received notice that this was going to occur tonight. He certainly wasn't able to prepare for it, staff wasn't able to prepare for it. He would have expected a courtesy copy of the LUBA appeal emailed to him, he didn't receive it. The more we have this conversation of a public meeting outside of the hearing process the more substantial the legal risk is of having issues.

Council President Greisen asked if staff will email Council about an available time and date for an executive session?

Legal Counsel Peter Watts replied yes.

Councilor Miller asked what are the rules as far as how long do we have? He stated that assumes we do a review and want to change something of course.

Legal Counsel Peter Watts replied you would have until the record is submitted and approved by LUBA so he can't give an exact date because if any party believed there was something that either was in the record and shouldn't be or wasn't in the record and should be then we don't have a confirmed record and that could go on for a while.

Mayor Backus stated you can find that out based on that date of the LUBA appeal, they will not even look at it for a certain amount of days and we can do something during that time frame.

Legal Counsel Peter Watts stated we could ask LUBA to voluntarily remand a decision for further consideration by Council.

Community Development Director Laurie Oliver Joseph stated we know that that is an option but she thinks what Mayor Backus is getting at is what's our time frame to look at it before we would perhaps say that we wanted to do that. In other words Legal Counsel Peter Watts mentioned 30 days...

Legal Counsel Peter Watts replied, again, are we talking about him answering questions in the executive session because we have a confirmed decision and it's been appealed so we're no longer in this venue, we are in a new venue.

Mayor Backus explained he is asking how much time does Council have to make a decision before LUBA starts working on it.

Legal Counsel Peter Watts replied LUBA won't do anything until they have a confirmed record. He stated it's no more than 45 days. He stated we have a record that is probably at least 1,000 pages at this point, but we've been identifying them as they came in and so it shouldn't take that long to put the record in

Mayor Backus stated he doesn't want to have a meeting and know that it was too late. He stated so if we meet within a week, you don't expect it to be final at that time?

Legal Counsel Peter Watts replied we're no where close to that. He stated because we have to label every page and because we have to do all these technical things in order to comply with LUBA's rules including the gauge of the paper we use and the color of the cover paper that we use and how it can be bound. There are all of these incredibly prescriptive rules about exactly how to present the record and then how much time people have to review the record and then how we correct the record and then it gets the pleadings. It is not going to happen next week.

Mayor Backus he would like to see that, as it is their name that will be put on it. We have a little bit of time to go through and make sure we feel comfortable and confident in our decisions especially with the new Council. He would like to see that.

Legal Counsel Peter Watts explained he is hearing Council say they want an executive session.

Community Development Director Laurie Oliver Joseph explained she doesn't think in a week we will have enough time to notice it and for Legal Counsel Peter Watts to prepare a response. She asked could we do it on the 17th after the regular meeting?

Legal Counsel Peter Watts replied yes.

Mayor Backus stated if the time doesn't open up next week then the executive session will be on January 17.

Consent Agenda ~ December 5, 2022 Council Work Session minutes; December 5, 2022 City Council meeting minutes; December 12, 2022 Council Work Session minutes; December 12, 2022 City Council meeting minutes; and December 19, 2022 City Council meeting minutes

Councilor McHugh moved, and Council President Greisen seconded the motion to approve the Consent Agenda ~ December 5, 2022 Council Work Session minutes; December 5, 2022 City Council meeting minutes; December 12, 2022 Council Work Session minutes; December 12, 2022 City Council meeting minutes; and December 19, 2022 City Council meeting minutes. Motion passed 6-0. Mayor Backus, aye; Councilor Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Holmes, aye; and Councilor Lafrenz, aye.

New Business **Review Goals**

Goal 3: Create a safe city with a visible public safety presence

3.1 - Operational Needs Analysis and Maintain Sufficient Staffing

Council President Greisen asked Chief Lougal if he could just run us through some numbers on who we have and who we need and who's coming.

Chief Lougal explained Lieutenant Fluellen started a couple of weeks ago; Officer Alec Burglin is at the academy; Officer Frank Basso will be going to academy at the end of January; and then we have our three Veteran Officers that are maintaining the road. He explained we hired an evidence tech who has been doing a wonderful job and we will be conducting interviews for entry level at the end of this month. He stated hopefully that should get us close to full staffing; minus one position that is on hold.

Mayor Backus asked about if there was something about doing a needs analysis?

City Manager Rains replied we do have the Oregon Association of Chiefs coming in later this month to do an assessment of the department. She explained they will look at organizational

and management style and essentially policies and operating that are operating within the department and it's a pretty thorough report and they'll come back and let us know what they think of that. She explained beyond that report if there's additional information that you all want to see out of that we can always look at doing more but she feels like this is a really good opportunity because it's a really great association and program and it doesn't cost the City very much to have this done. We do have really well respected Chiefs from other cities that come in and do this assessment for us.

3.2 - Increase Transparency of Crime Data

Mayor Backus asked if there is a way to track how many people are looking at that website.

Assistant to City Manager Isaac Butman replied we do have analytics on the website so we can see how many people travel every page. He hasn't looked yet, but he can certainly do that.

Council President Greisen talked about the Fire Districts posting of incidents on Facebook seem to be very like in the moment. She asked Chief Lougal to explain why maybe the Police Departments Facebook page doesn't function that way.

Chief Lougal explained the Police Department could post about some cases after the event, but we hardly want the citizens knowing what's going on currently as all incidents are active and we never know what they are going to get themselves into and they would be posing more of a safety risk by putting that information out to everyone. He explained it is not safe for the Officers to have to deal with crowds while they are doing with an active situation. He stated they try to get as much out there after the fact which is safer for everyone.

3.3 - Coordinate with Columbia County 911

Councilor McHugh asked if the meeting on the 11th is open to the public.

City Manager Rains replied yes, it is.

3.4 - Maintain emergency response preparedness and update emergency operations plan to address all emergencies including a Cascadia earthquake event

Council President Greisen explained she has spoken with the new Director Chris Carrie on the phone about some other things and she is very excited about this new turning point. This is something that she has been a little frustrated with and she is excited that there is leadership there, we are established here, we're ready to go, as this report says with the Fire District as well. She is really hopefully that an action plan will be put into place. She stated thank you Dave and Chief for being a part of that.

Councilor Holmes gave an overview of a program called NET Team which otherwise across the County it is referred to as CERT. She believes there is a County CERT program that is ran out of St. Helens and she

hasn't seen a whole lot of community activity from the group within Scappoose. She doesn't know if there is a way to kind of strengthen that. She explained this might tie into the goal that was listed for a public academy or another way to kind of engage the citizens which she understands had to kind of take the back burner to the priority of staffing and all of that. She is wondering if those two priorities could be merged because it is a way to kind of engage the public, those who are interested in helping to prepare for and participate particularly in earthquake preparedness.

Councilor Miller explained 3.3 and 3.4 have a lot of overlap to them because as it stands right now our emergency communications system is very, to put it best, questionable on whether or not it would withstand. He explained it goes down during our typical weather events as it. He explained a lot of these things have a lot of overlap.

3.5 - Engage The School District to Enhance SRO program

Mayor Backus asked if they were to build a new middle school by that was down on the same campus, having them right by each other would that help at all?

Chief Lougal explained they did quite a few walkthroughs during the summertime. Prior to the new Officers going to the academy, they had them walking the schools daily, and they were attending all the community events. He explained while we may not be able to get to a traditional SRO program within the next year or so, but once the two new Officers come back and they kind of figure out what the schedule will be like, that will be part of the regular duties.

Council President Greisen explained that this is a joint contract with the School District and that requires funds from both sides and at the time those funds were not available from the other side. She stated even if there is staffing on our end, the budget needs to come from both parties.

3.6 - Community Engagement

Chief Lougal explained they are part of just about every event that occurs.

3.7 - Citizens Academy

There was no further discussion.

Goal 4: Develop a diverse and accessible park system for people of all abilities within a 10-minute walk

4.1 - Update the Parks and Recreation Master Plan

Mayor Backus stated this is ongoing and has been going for a while. He would like to see more about people with disabilities being able to access the parks.

4.2 - Peace Candle – protect and restore, update the Welcome sign

Public Works Director Dave Sukau gave an update. He explained the expect to see it completed late spring/early summer.

4.3 - Develop the Grabhorn property conceptual plan

City Manager Rains explained by request of the Park & Rec Committee this is on hold; and with the Parks Master Plan in play that makes sense because you ultimately want this to be combined with the master plan and anything in a master plan is going to have a much better shot at a grant and it can be wrapped up into that process. Also, it can be part of the capital improvement plan.

4.4 - Continue Friends of Scappoose Parks

Councilor Holmes asked if this needs to continue to be a goal. She stated having been on the Park & Rec Committee for six and a half years, they certainly are aware of the existence of the Friends of Scappoose Parks. She doesn't think they have ever utilized it as an organization or a funding source or anything like that.

Assistant to City Manager Isaac Butman explained the Friends of Scappoose Parks us essentially the Park & Rec Committee. It was kind of formulated to be like a 501 c3 version of the Park & Rec Committee to help fundraise and do things and essentially during COVID that kind of stopped and fell by the wayside. The Park & Rec Committees normal scope of work has been doing most of what that group did.

Councilor Holmes explained her suggestion would be maybe we just look at reprioritizing that or changing the goal around that.

Mayor Backus would like to see the Bylaws to see what the job entails, what the Committee entails and see if it is something that as we grow with our parks it's something we can reestablish.

4.5 - Support Public Art

Public Works Director Dave Sukau explained we had a steel sculptor reach out to us this past month and they will be reaching out to meet with them just to see what they have to offer.

Goal 5: Address aging infrastructure

5.1 - City Facility Master Plan

Councilor Holmes asked where do we potentially stand with the School District on any discussion to potentially acquire the middle school. She asked is that even addressed in the

School Districts long-term plan?

Council President Greisen explained the School District is putting together a bond that will go on an upcoming ballot. She explained the bond has to pass in order for a new middle school to be built. She stated if that does pass, that doesn't mean that the School District will be handing over the middle school or be willing to sell it. She explained there are a lot of what ifs in play.

City Manager Rains explained she thinks the middle school is a great idea but she doesn't know ultimately at the end of the day how realistic it is because of the cost associated with it.

5.2 - Wastewater Phase I improvements

Public Works Director Dave Sukau gave an update on the improvements.

5.3 - Stormwater Master Plan

City Engineer Chris Negelspach gave an overview of the Stormwater Master Plan.

5.4 – Update wastewater and transportation SDCs/fees

Mayor Backus asked if the fees have been taken care of with the last update?

Public Works Director Dave Sukau explained yes, the wastewater has been reviewed and our numbers right now are right with the new numbers. We just haven't had time to bring them to Council for updates on that.

5.5 - Collections master plan implementation

Public Works Director Dave Sukau explained Smith Road pump station is definitely on our horizon for the collection system. It is our next large capital project. He explained as far as the collection system and pipe work right now we are just doing spot repairs.

5.6 - Delivery of water and wastewater infrastructure projects

Public Works Director Dave Sukau gave an overview of the two wells that are on the horizon.

Announcements – information only

Calendar

Mayor Backus went over the calendar.

Updates: City Manager, Police Chief, Councilors, and Mayor

City Manager Rains stated congratulations to Mayor Backus; Councilor Holmes; and Councilor Lafrenz and welcome! She thanked staff for being here this evening to discuss goals.

Chief Lougal stated congratulations!

Councilor Holmes thanked staff for the help kind of getting geared up, answering all the questions and being really responsive. She stated this is an exciting opportunity to serve the community in this capacity but also certainly a somewhat intimidating one, but she is looking forward to getting through it with all of her fellow Councilor's support and the staff.

Councilor Miller stated welcome new Councilmembers. He is excited to have them on board. He welcomed Lieutenant Fluellen and said it is good to have him onboard. He explained 911 has their next meeting on January 11, and it was originally said at the December 1 presentation that it was going to be at the end of January, or sometime during the end of January, however it is going to be on the 11th. He explained it is kind of unclear what exactly they are doing. It sounds like there may or may not be an attempt to vote on a specific system. He explained he did send out a comparison sheet that he worked on with some professionals to basically do a side-by-side comparison between the presentations that were presented that was done at the end of November and then also Motorola and Tait presented again on December 1. He explained that was sent out to all of Council on December 9, and if you didn't get that please let him know. It very clearly shows the difference in columns between what we are looking at and basically the summary is that Tait's coverage that they proposed with 14 sites gave the County, the Public Safety responders extremely good coverage and there were no concerns that he heard whatsoever from anybody that saw that. He explained there is one thing that continues to bother him very much and that is the lack of desire from the 911 District specifically the Director to involve the schools in this project for school safety. He will not support any request for any system that does not enhance school safety. Specifically, what he means by that is there needs to be a school emergency talk group on the radio system and there needs to be radios in school where they can hit the emergency button and it instantly goes to 911. It is essentially a panic alarm that is free of failure and that is one thing that if they continue not to include that in their overall plans, which he will bring back to Council, but they will not have his support unless they include schools because of the school safety aspect. He stated so all of that to say, please come on the 11th. He thanked Councilor McHugh for being present at the presentations and he specifically brought up the school aspects too. He thinks it is extremely important and also allows the 911 District to qualify for school safety grants as well.

Council President Greisen explained their kids go back to school tomorrow so please be careful on the Highway again, and the kids will be out there on the side streets. She wanted to give a huge appreciation to the new Mayor. He reached out to Councilors. She knows she personally had a meeting with him. She is very excited at his willingness to learn, but also to do. She stated

congratulations to Councilor LaFrenz and Councilor Holmes for being here. She welcomed them and stated she appreciates them being here.

Councilor McHugh welcomed the new Councilors. He stated good job Mayor Backus with the meeting. He explained during the meeting with 911 he asked the presenter (Not Tait) regarding the schools and the response from the presenter was that they weren't asked to do that. He stated that was interesting that that wasn't part of the criteria that they were going to report on. He explained Tait included it in their presentation.

Councilor Lafrenz thanked City Staff for their assistance. He stated it is an honor to serve.

Mayor Backus thanked his mother and his favorite child for making it all the way through the meeting. He stated it has been a humbling last two or three months and he appreciates all the help and support he has been given and all the education he has learned as well. He stated truthfully it has always kind of been a dream of his to be in this kind of situation where he can try to help a lot of people and he thinks at this time this could really be it. He really appreciates that. He does really look forward to working with staff, it is going to be a lot of fun. He did want to give a shout out to our High School girls' basketball team. He stated we did just come back from Las Vegas last week where we did win a basketball tournament and won a trophy. He explained they went four and one and the varsity girls did really well. He stated good job to them. He wanted to thank Mayor Burge; Councilor Lesowske; and Councilor Poling for their dedication to the people of Scappoose. He truly believes we are a better City because of them.

Adjournment

Mayor Backus adjourned the meeting at 8:53 p.m.

Mayor Joseph A. Backus

Attest:

City Recorder Susan M. Reeves, MMC



SCAPPOOSE *Oregon*

TUESDAY, JANUARY 17, 2023
CITY COUNCIL
REGULAR MEETING 7:00 PM
COUNCIL CHAMBERS
33568 EAST COLUMBIA AVENUE
SCAPPOOSE, OREGON 97056

Call to Order

Mayor Backus called the meeting to order at 7:00 pm.

Pledge of Allegiance

Oath of Office for Councilor Jeannet Santiago ~ Administrated by City Recorder Susan Reeves

Congratulations Councilor Santiago!

Roll Call

Joseph A. Backus	Mayor	Alexandra Rains	City Manager
Megan Greisen	Council President	Steven Lougal	Chief
Tyler Miller	Councilor	Chris Fluellen	Lieutenant
Jeannet Santiago	Councilor (left at 8:28pm)	Susan M. Reeves	City Recorder
Andrew Lafrenz	Councilor	Isaac Butman	Assistant to City Manager
Peter Watts	Legal Counsel		

Remote: Councilor Pete McHugh; Councilor Kim Holmes (joined at 7:09pm); Paul Fidrych (left at 7:53pm); Anna Del Savio with the South County Spotlight; Ryan (left at 7:16pm); Beth Rajski; Matt Hoffmann (left at 7:51pm); Lauren (joined at 7:27pm) and Joel Haugen (joined at 7:33pm).

Approval of the Agenda

Councilor Miller moved, and Councilor Lafrenz seconded the motion to approve the agenda. Motion passed (6-0). Mayor Backus, aye; Council President Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Santiago, aye; and Councilor Lafrenz, aye.

Public Comment

Judy Haugen, Scappoose, handed out a memo to Council.

Joel Haugen, Scappoose, read the handout.

Mayor & Councilors,

At the January 3rd Council meeting, I hand delivered a 10-page letter from our attorney Chris Koback of Hathaway Larson outlining both procedural and substantive errors RE the December 19, 2022 Council decision on Buxton Farms. Our attorney tried to get this information to all concerned earlier through public comment at the December 5th meeting, but he was cut off in mid-sentence, and was denied giving written comment afterwards.

Mr. Koback's letter delivered on January 3rd seemed to catch City Attorney Peter Watts off guard. Mr. Watts has known that we have employed Chris Koback since we publicly stated so at the October 27th Planning Commission meeting, which Mr. Watts attended. He even asked for clarification as to which attorney at Hathaway Larson we were working with.

It is the City Attorney's responsibility to be unbiased and to work with both sides during the hearing process. While Mr. Watts has shown a rather cordial working relationship with the applicant's attorney, he has never once reached out to Mr. Koback, even though he has had almost 3 months to do so.

As of January 12, 2023, Mr. Koback had not heard from Mr. Watts, so he composed and sent this email to him:

Peter:

In the last council meeting, you presented to the Council one option which is a voluntary remand. agree that you accurately recited that all parties must consent in writing. I also appreciate that you had not had a chance to evaluate our letter. We presented accurately that Council has another option that does not require consent of any other participant. I assume by now you have studied the letter. If you disagree with my analysis of the withdrawal rights, I appreciate it if you let me know the basis for any disagreement. If you agree with my analysis, can you confirm that you have at least advised council that my analysis is accurate? I think we all share a belief that Council or any decision maker should have an accurate understanding of the relevant law. Thank you.

Chris Koback I Partner
Hathaway Larson LLP

As of today, Mr. Watts has not responded to the January 12th email from Mr. Koback. If we were on Council, we would ask Mr. Watts why he did not reach out or respond to Mr. Koback or his partner Mike Conners, with whom Mr. Watts has previously worked, to resolve differences? At this point, we do not see how Mr. Watts can provide objective legal advice to Council RE this matter and we urge you to direct staff to withdraw for reconsideration the December 19th decision, before this LUBA option runs out for you.

Respectfully,
Joel & Judy Haugen
end of handout

Lisa Bindle, Scappoose, explained she is here to talk about the Scappoose crime that's going on here in town with kids that are under the age of 18. She explained recently we have had, that she knows of, two break-ins or burglaries of two convenience stores here locally. She talked to the owner of one of the stores and they told her what had happened, and that they knew who the kids were. The owner said they were caught, but nothing happened past that. She stated by chance she happens to know the mom of one of these kids that was involved, so she is here on her behalf as far as speaking out. This young person has been in trouble for a while and she doesn't feel that there's really any recourse for them getting help and it seems to be the same people or same young people that are doing these crimes, at least the break-ins. She doesn't have the answer for this as far as what we should do, but she is worried that kids that are having troubles like this, getting put into jail, are not getting the help that they really need. She stated criminals are kind of stupid, but in some sense they are smart. If they are so smart that that they're doing these things and coming up with these plans, obviously they should be able to do something that's good for the community. She has looked into camps for youth. She is sure all of you have thought about this. She is not sure what the answer is, but she would like to be a part of the solution. If there is something she can do or to get out there for the community, she would love to see that. She doesn't want to see any kids killed by breaking into a store or a home where we could have changed that and that is why she is here tonight. She wants to be part of the solution. She stated you have her email, and her phone number. She is good at speaking to other people. If there are things that she can do she wants to do it, she wants to be a part of it.

Mayor Backus thanked Lisa.

Councilor Miller said to Lisa if she reached out to the Juvenile Department that would be a powerful thing. He stated he is sure Chief Lougal will help in any way that he can as well.

Council President Greisen mentioned if they are students that are enrolled in the Scappoose School District, Lisa could reach out to the resources in the School District.

Mayor Backus explained to Lisa that he will try to find out if there are more available resources and get back to her.

Sharrie Ryan, Scappoose, wanted to express her appreciation for everything Council does for Scappoose. She explained that she has seen Council members go to bat for things that are really important for our kids and our community, and she really appreciates that. She wanted to also express appreciation for the City Manager and the Police Chief going in and investigating and looking into the things with the massage business regarding the things that are going on in our town regarding illicit activities. She wanted to thank them for that. She also wanted to say thank you to Council for what they continue to do regarding public safety. She explained she

follows a lot of stories in the community. She knows that the radio replacement project is a really big and important issue. She thinks many people recognize that it's not easy to stand up to other government agencies to question what they are doing especially in this County where we live, where we know every single person basically and there are many personal relationships involved just by nature of how small we are. It's obvious that this Council is deeply concerned about the proposed replacement radio system will have on the public safety and the first responder safety, and the school safety and the financial impact to us taxpayers who actually have to pay for the system. She has been following this for quite some time and she just wants to thank the City Manager and the Council. She sees their efforts advocating for those things for them and the safety of our officers and everyone, and she really appreciates it. She knows that a public safety radio system that meets all the first responder requirements at the lowest cost to us who have to pay for it should be 911's primary focus. It does baffle her sometimes about the Board and the things that they voted in, but that's the beauty of the Democracy we live in, we have opinions, right? She stated again, she wants to thank Council for watching out for the interest of our citizens of Scappoose and supporting our law enforcement officers. It is a dangerous job that they do. Thank you so much!

Mayor Backus thanked Sharri.

Consent Agenda ~ January 3, 2023 City Council work session minutes and appointment of Elizabeth "Scottie" Meinke and Terry Brooks to the Park and Rec Committee

Council President Greisen moved, and Councilor Santiago seconded the motion to approve the Consent Agenda ~ January 3, 2023 City Council work session minutes; and appointment of Elizabeth "Scottie" Meinke and Terry Brooks to the Park and Rec Committee. Motion passed (7-0). Mayor Backus, aye; Council President Greisen, aye; Councilor McHugh, aye; Councilor Miller, aye; Councilor Santiago, aye; Councilor Lafrenz, aye; and Councilor Holmes, aye.

Terry Brooks, from the audience, introduced himself.

New Business

Update on Columbia County Small Business Development Center (SBDC)

City Manager Rains introduced Jason Moon and explained he would like to discuss some questions he has for Council and gather some information so that the center functions in a way that is reflective of the Council's vision.

Jason Moon, Director, gave an update on the Columbia County Small Business Development Center. He explained they are fully operational. He is meeting businesses out in the community. He thanked the City of Scappoose for their support and commitment again for making this possible and of course his host institution the Columbia Economic Team. He explained 75% of businesses fail in the first five years. However, when a business seeks business advising and sets

up a business plan there's a 65% success rate that that business lasts five years and that is one of the main reasons, they are here in place in Columbia County. He explained Columbia County SBDC is a resource center for helping start, run, and grow the best small businesses here in Columbia County. He explained they are the 20th center in Oregon. They are unique because they are the only center that is not affiliated with a community college. He stated they are for the community, by the community, funded by the community and here to help the County. He explained currently they have over 80 clients with over 280 advising hours and many of those clients live here in Scappoose. He explained in the Council packet there is a list of questions. He asked Council if they have time to fill out the survey and send it back to him. He explained as the Director of the SBDC he wants to ensure that they are meeting Councils expectations as the City of Scappoose being a stakeholder, offering the best services possible to businesses or residents, whoever is thinking about starting a business here.

Councilor Santiago asked Jason Moon what does he feel that the local businesses are needing, what resources?

Jason Moon replied a lot of people are asking for access to capital grants/money to help start up or to help an existing business.

Councilor Lafrenz asked if there are any unique challenges or obstacles that the Scappoose clients face that he doesn't see in other cities in the County?

Jason Moon replied he would say that retail space is especially a challenge here, it is an issue throughout the entire County.

Council thanked Jason.

Ordinance 910: An Ordinance Relating to Massage Businesses, Creating Scappoose Municipal Code Chapter 5.20, Massage Facilities

Assistant to City Manager Isaac Butman explained the first thing he would like to note going into this is this ordinance would, to the best of our knowledge, be the first type of ordinance like this in the State of Oregon. He explained these ordinances are not uncommon in other States but according to the Oregon State Massage Board no other cities have this type of ordinance restricting massage business. He explained the other thing going into this is that as with all ordinance changes we try to stay mindful of the impact of our small local businesses as we write. You will see through here as we go through it tonight, that we have been mindful of the impacts, trying to keep them minimal while still implementing the spirit of the ordinance.

Chief Lougal explained the report that he gave on the original business denial is at best 25% of what he knows and could share. So, the information is limited because until this point the investigation was still ongoing.

Assistant to City Manager Isaac Butman went over the staff report. On August 23, 2022, the Scappoose Police Department received an application for a business license from Pure Massage. During an investigation it was discovered that the business was in violation of several State and Local statutes, lacked certification from the state massage board, and it was alleged that members of its staff were offering sexual services to customers, Exhibit A (of the staff report). It became clear to the Police Department and City Staff that Scappoose Municipal Code lacks language sufficient to prevent the establishment of massage businesses that are used as a front for illicit activities. Massage businesses have long been a front for illicit activities, including prostitution, human trafficking, and money laundering. Business licensing is controlled by local municipal governments and is one of the best ways to prevent illicit businesses from establishing themselves in a community. Staff reached out to the State Massage Board and were given a sample ordinance and guidance on best practices for preventing illicit massage businesses from establishing. The guidance can be seen in Exhibit B (of the staff report). Staff drafted an ordinance, Exhibit C (of the staff report) to prevent illicit massage businesses from obtaining a business license in Scappoose, while balancing the needs of small businesses, by writing code that is not unnecessarily burdensome or costly. Legitimate businesses can meet the requirements of this Ordinance while realizing minor impacts to the time it takes to complete a business license application. The majority of additional burden amounts to submitting diagrams of the business and submitting to a background check to ensure no records indicating that applicants engage in illicit activities. Staff will be asking that applicants be required to pay a nominal fee of \$30 to process each background check; this is slightly less than the fee the Oregon State Police charge for a background check and is simply cost recovery for the additional costs to conduct the background check and write a report for the applicants' file. Staff will bring a Resolution before Council on this matter if this Ordinance is adopted. This language has been reviewed by the Police Department and Legal Counsel. If adopted, this ordinance would be one of the first, if not the first, preventative local ordinance of its kind in the State of Oregon. The largest fiscal impact of this ordinance causes is the cost to complete background checks for applicants. Each background check and written report will take 10-20 minutes to complete. The City of Scappoose does not currently charge a business license fee that could help offset this additional cost. Without assessing a background check fee there are no cost recovery options for the additional time and costs associated with the enhanced review required by this licensing process. Staff recommends Council approve Ordinance 910, an ordinance relating to massage businesses, creating Scappoose municipal code chapter 5.20, Massage Facilities.

Councilor Lafrenz asked in the other cities and States that have done this ordinance, has there been any legal pushback against it?

Legal Counsel Peter Watts explained what we have done mirrors State Law, but we have to be realistic about the resources of the District Attorney's office as well and so really what this does is this allows our Police to do a separate verification. He explained these cases can be hard to prosecute as well so in the event that it wasn't necessarily a priority of the District Attorney's office this would give us another avenue in order to make sure that no illicit activity was happening. He explained our other goal in this is if there's one City that has these enforcement

mechanisms in the State of Oregon this does not seem like the type of City that people who engage in illicit activity will want to come into because we actually have the ability to do something on a local level. He explained in looking at this, Chief looked at it on a police perspective, and he looked at it on a legal perspective and he doesn't know if the State Massage Board has a ton of resources. The licenses that were provided by an attorney for the applicant demonstrated that they had received business licenses in Portland despite the fact that they were using the word massage when they weren't supposed to, and that the owner wasn't registered with the State Massage Board neither were any of the businesses registered with the State Massage Board. He explained this investigation was in response to citizens that were concerned. He thinks the vast majority of massage therapists that are licensed in the State of Oregon would never engage in any kind of this type of thing, but there are businesses that do, and our goal would be that this would prevent them from considering coming to the City and in the event that they do would give our Police the resources that they need.

Assistant to City Manager Isaac Butman explained essentially the purpose of this is prevention. We are not trying to kick anyone out. What we are trying to do is create a structure where businesses that come here, because of the nature of this, be able to look into their business.

Councilor Miller asked about the background.

Assistant to City Manager Isaac Butman explained we will do the background in house just to make it a little faster for the applications as we don't want to hold things up. He explained we are looking mostly for illicit activity so the criminal history would be the main thing.

Councilor Miller replied where he is going with that is if you are going to use the CJIS system to get that data there is very strict requirements on how you can use that data base. He stated he would make sure that that is one of the allowed uses. He asked what is the criteria? If something comes back, who will be looking at that and who's judging them?

Assistant to City Manager Isaac Butman replied so the background check information would go back to whoever is doing the background check, probably the LT and they would write a report saying yes, we found something or no we didn't. If there was something in there that was flagged that would be looked at by the Chief, by the ultimate decider of the business license permit. He explained there are accepting factors. He went over the language in the ordinance that goes over the accepting factors.

Councilor Miller explained he would prefer to have that defined, who is evaluating those returns and what the criteria is, just so it is consistent, and we don't get accused of discrimination. He explained if we have a policy that sets out the standards for rejecting then you mitigate your potential discrimination claims. He stated the other question that he has is it is a flag to him that we're the only City that is doing this in Oregon. He asked are we absolutely certain that there's no Constitution or legal reason why other cities have not done this.

Legal Counsel Peter Watts replied it's covered under State Law so there are State Statutes covering all this and that is why our code mirrors State Law. He stated it is kind of a dual track, one is we want to send a message that they shouldn't locate here, and two that in the event that the D.A. didn't have resources that we could do this in the municipal court.

Council President Greisen explained it is her understanding having talked with Chief Lougal over the last several months, that it is unfortunate that he ran into several dead ends, not in his investigation but in getting the help he needed or resources to write people up or to find a way that people could stop that behavior or that the State could help with an investigation. This ordinance would have helped during that time, and it would have made it easier.

Chief Steven Lougal replied this ordinance is kind of like a last resort. He explained early on he reached out to everyone. He had meetings, he developed relationships, but it was very difficult to get those partners to sign on because of the available resources or lack thereof. He explained these types of investigations because they involved so many different factors, they could go on for a long time. He was on it August, September, October, November, and he is still on it, and he could have used help. It was suggested by the Massage Board that we be a trendsetter and put the massage ordinance in place so that due to the lack of resources we would be able to do something about it and keep the community safe.

Chief Lougal explained most of the information he found was through open sources. It was readily available on the internet, it was making a couple of phone calls to confirm, he didn't have to go into any criminal databases to find out this information. It was all readily available. He explained what he can tell Council is that the actors involved have paid so much money in fines but then they are still staying in business because they're making that much money. There is really no way to stop that type of business from coming in unless we have the ordinance.

Councilor Miller asked how do you know who to background and that they're giving you all the names?

Assistant to City Manager Isaac Butman replied they could always hide names. We do rely on them to give us accurate information. He explained with this in place at the first sign of something out of place you can walk into that business and ask them for information. We would have more checks, where currently we don't have the ability to kind of intervene.

Councilor Holmes asked if staff had a chance to speak with any of the existing massage businesses that have been established for a number of years, to see if they felt this was burdensome or could be a deterrent to renewing their license?

Assistant to City Manager Isaac Butman replied many of the businesses here don't actually fall underneath this new ordinance because they offer massage as part of a physical therapy or a chiropractic business. He explained the Chief did reach out to some of the massage only businesses and they essentially said that they felt validated by this and that we would be

legitimizing their businesses by making sure that that element isn't here in Scappoose. When people drive through, and they see a massage business they know it's legitimate.

Councilor Miller stated so when the City gets asked why we are only doing this for this type of industry do we have a defensible?

Legal Counsel Peter Watts replied yes, we did this by category of business and actually considering where the recommendation started as far as background checks, we paired it way down. He explained Chief spent a lot more time on this than he did, but the people that get flagged by this generally there is pandering in their background or things to that nature in their background. We already have a variety of means to reject licenses under health and safety and in fact during his research he found that there was once a business license that was rejected based on sex offender history. He stated we are aware, and he thinks that the State Massage Board is aware too and everyone is aware that there's certain type of massage businesses that are engaged in this specific illicit activity. He explained if that were to go to another category of businesses where we became aware that they were doing the same thing he thinks at that point we would extend that to them as well.

Councilor McHugh thanked staff for reaching out to the current massage businesses to get their input, he thinks that was very important. He asked how long does it take to get a turnaround on a background check?

Chief Lougal replied in this instance, 20 minutes.

Council President Greisen explained she was taking to heart Councilor Miller's concern about having some sort of a rubric or criteria for approval and denial, considering that we would be the first City to be doing this in the State. She thinks we need to lock this in as tightly as we can and as clear as we can, and she would feel most comfortable seeing something that explicitly noted what would be a flag and what wouldn't and what would be criteria for approval and what would be criteria for denial. She would prefer to have staff work on that piece and have the ordinance come back to them.

Assistant to City Manager Isaac Butman replied he would think that they could give some structures. He thinks a lot of this would depend on the type of potential criminality we saw, so it might be hard to get it very, very concrete but they will definitely try to get some boundaries around it.

Councilor Miller stated if we have one person who is reviewing these and rejecting or approving them, we want to be able to try to mitigate somebody claiming that some sort of protected discrimination or something like that. He stated the best way to do that is through clear defined policies that Council has adopted. He stated that is his concern to making sure that we're not exposing whoever at the Police Department to that sort of claims.

Legal Counsel Peter Watts replied he agrees with Councilor Miller that it would probably be prudent to come up with like a class of crimes because there is no nexus between shoplifting for instance or something like this. He stated we can develop that list with Chief and bring that back to Council. He explained we were very clear throughout this that we wanted as clean of a process as possible, we wanted it to clearly apply to the category, we wanted to make sure that it was non-discriminatory and to the extent that people were part of a protected class that aren't going to have any of those problems. He explained he has had a couple of conversations with the District Attorney about this and he is supportive of it generally.

Chief Lougal stated there is a list of denial and to him it seems pretty clear, but if they're not, he would just like some guidance.

Mayor Backus said he thinks what they are concerned with is when a background check comes back, and it flags something.

Chief Lougal replied it would only apply to those reasons. He stated specifically what is here is what we're going to look at. He said he thinks the only thing we could add is someone who was found guilty of sex offense.

Council President Greisen explained Chief will not be here forever so what is a red flag to him on a background check, is that the same red flag to somebody else.

Chief Lougal replied he thinks we can outline that. He understands where she is going and stated we can clean that up a little bit.

City Manager Rains stated she thinks what it sounds like where we are going with this is in number 5 where it states any other applicable law, the desire is to have a little bit more definition around the words applicable law, which sounds to her based on this conversation like sex offenses, human trafficking, and money laundering are probably the big three that we're looking for to be actually spelled out in the ordinance, so we will do that.

Council President Greisen explained we are asking for a background check, that is very new. She explained it should be listed what is it in the background check that we are looking for, that's all she wants, just explicit bullet points.

Mayor Backus explained he would like a little clarity on a few of the criteria. He is thinking more on the people that may have had an issue way back in the past and we don't want to hold something against them that maybe isn't related anymore.

Mayor Backus explained this is a public hearing and opened the public hearing at 8:12pm. He asked is there anyone who would like to comment on the Ordinance Relating to Massage Businesses, Creating Scappoose Municipal Code Chapter 5.20, Massage Facilities?

Marisa Jacobs, Scappoose, explained she actually is very much involved in background checks in the corporate world, so this conversation has been quite interesting. She shared some thoughts with Council for consideration. She explained with respect to duration in the corporate world, it is a seven-year criminal background check that they adhere to. More importantly every State and even subsequent jurisdictions governs what you can look at and what you can't look at. She explained the other thing is with respect to the criteria she understands the concern of having a defined matrix on hand how background checks are being what's called adjudicated, they are being reviewed. Her suggestion is that you would want to keep it structured, you want a framework, but you also want to give yourself the ability to interpret what is being found on those background checks. She explained it is very difficult to try to create a very specific criteria matrix to evaluate background checks. She explained you have to really level it up to like non-violent misdemeanor and felonies and violent misdemeanor and felonies and you may put together criteria that says if you've had a violent felony within the last one to seven years you are automatically not going to be moving forward. She explained these are just some of the things that herself and one of the companies that she works with in town have been working through. She would like to offer the suggestion of keeping the finite detail of what is being evaluated internal and just set out big framework, so it gives the discretion to in this case the Police Officers, the ability to take that information and adjudicate it appropriately so that they are protecting the community. She thanked Council.

Council thanked Marisa.

Mayor Backus asked if there was any other public testimony? Seeing none he closed the public hearing at 8:14pm and moved it forward for Council to discuss.

Councilor Santiago asked if \$30.00 is enough?

Assistant to City Manager Isaac Butman replied yes.

Council President Greisen stated to Isaac that he said earlier that there is potentially of only three businesses right now that fall into this category.

Assistant to City Manager Isaac Butman replied yes, and this would last for three years. We are not asking them to come back every year and do the background check.

Mayor Backus asked if three years is too soon.

Assistant to City Manager Isaac Butman replied we definitely felt one year was too much, and six or seven was stretching it and so they felt three was reasonable. He explained we can adjust that if that's too short.

Mayor Backus stated he is fine with one year. He explained potentially a few of the provisions we may add. He asked if Council wants to change number 5 or are they fine with the way it is now?

Council President Greisen explained it sounds to her like it was going maybe in a separate category or in a different one, just the clarifications.

Assistant to City Manager Isaac Butman replied he thinks if he was to construct this and redo it, he would probably take Section D on page 31 and get far more specific there; and for number 5 he would reference that back to Section D as described so that extra language is not being created in the ordinance and it will be easier to understand.

Councilor Santiago moved, and Council President Greisen seconded the motion that Council adopt Ordinance 910, An Ordinance relating to Massage Businesses, creating Scappoose Municipal Code Chapter 5.20, Massage Facilities, with amendments that were suggested during the hearing.

Mayor Backus read the title for the first time ~ Ordinance 910: An Ordinance Relating to Massage Businesses, Creating Scappoose Municipal Code Chapter 5.20, Massage Facilities is on first reading and will come back to Council at our next regularly scheduled meeting for discussion and potential adoption.

Announcements – information only

Calendar

Mayor Backus went over the calendar.

Updates: City Manager, Police Chief, Councilors, and Mayor

City Manager Rains reminded everyone of the Boards and Commission dinner, to thank our volunteers, is on January 25, 2023.

Police Chief Lougal addressed some of the comments made earlier about the juveniles. He explained he usually doesn't like talking about those type of matter, but we are well aware of the incidents that were brought up. They have identified the youth that are involved, and he thinks Councilor Miller explained the process very well and they are involved in a lot of other areas and there are a lot of different groups that they work with where these names have been popping up, so they are attempting to find resources for them. He just wanted to let them know that they are on top of it.

Councilor Holmes explained she is looking forward to all the meetings that they have kicking off this year. There's lots of exciting things underway with the Parks Master Plan. She is looking forward to the next steps with the 50-year plan.

Councilor Santiago explained she is glad to be back with the Council and she appreciates everything. She appreciates Chief Lougal looking into those programs for the youth because it is important. She stated please drive safely, it is dark and wet out there and there are so many accidents so slow it down on Highway 30.

Councilor Miller explained he is looking forward to the annual goal setting retreat on February 4 and for the new Councilors this is a great opportunity. It really kind of guides the City and the City staff on what their primary goals are throughout the year. All that to say, come prepared, think about what you want to see from the City. He stated review our past goals and our current goals, and come with some good ideas and ready for discussion. He explained on January 11, the 911 District had their joint Board and Advisory Committee meeting. He explained the motion was to sole source and go with Motorola Washington County and there were five votes for no and they were all the police departments that voted no to that, with the exception of St. Helens PD. The Sheriff's Office voted no on that as well, but all the Fire Departments voted yes and St. Helens PD also jointed them with a yes, so that got six votes. He stated as we go forward here everybody knows his concerns about the millions more dollars it is going to cost to go that route and some other concerns that he has. He just wanted to give a quick update on that. He is going to try to meet with Mayor Backus to see what more City Council can do to try to educate the public on what's going on and just basically see what else we can do at City Council to try to get the 911 Board to be more open and go out for an actual RFP and get the best price for the system that is needed so that we are accomplishing what our First Responders need at the best possible price for our taxpayers and in his opinion that is not what's happening right now.

Council President Greisen explained she is hopeful that we have some answers with some of our resources for our youth. She has been hearing a lot of different things, which makes her think she needs to have a conversation with the Chief about something she heard. She explained later this week she is meeting with Legal Counsel, Alex, and some representatives from the Senior Center to get an update on how they are handling some of their capital improvements and how they are addressing some of their concerns in the letter from the Department of Justice and the good things that are happening at the Senior Center right now. She explained on February 21st she is part of the Bond Advisory Committee for the School District but because of the holiday that is when we have a Council meeting. She stated at some point maybe she could take a look at the Council agenda and see how she could split her time.

Mayor Backus thanked Lisa Bindle for stepping up and helping with the youth. He stated knowing there is someone out there to help the youth really does help to begin with, so he appreciates that. He had the pleasure of being elected to the Columbia Economic Team (CET) Board and he really looks forward to that opportunity. He stated there is a lot of things happening and he thinks now is a good time to be here in Scappoose and he really looks forward to that.

Mayor Backus went into Executive Session at 8:28pm.

EXECUTIVE SESSION ~ ORS 192.660(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed

Present: Mayor Joe Backus; Council President Megan Greisen; Councilor Pete McHugh (remote); Councilor Tyler Miller; Councilor Andrew Lafrenz; Councilor Kim Holmes (remote); City Manager Alexandra Rains; Legal Counsel Peter Watts; City Recorder Susan M. Reeves; Community Development Director Laurie Oliver Joseph; City Engineer Chris Negelspach; and Associate Planner NJ Johnson. Councilor Jeannet Santiago recused herself.

Open Session

Mayor Backus went back into open session at 10:02 pm.

Adjournment

Mayor Backus adjourned the meeting at 10:02 p.m.

Mayor Joseph A. Backus

Attest:

City Recorder Susan M. Reeves, MMC



SCAPPOOSE
Oregon

2.

2023 CITY COUNCIL LIAISON

PARKS COMMITTEE:

ECONOMIC DEVELOPMENT COMMITTEE:

HISTORICAL SOCIETY/WATTS HOUSE:

SCHOOLS:

PORT OF COLUMBIA COUNTY:

TRAFFIC SAFETY:

SENIOR/COMMUNITY CENTER:

COLPAC: City Manager Alexandra Rains

ACT: Public Works Director Dave Sukau

911 COMMUNICATIONS:

50-YEAR VISION PROCESS:

Approved by Council on _____

CITY OF SCAPPOOSE

Council Action & Status Report

Date Submitted: January 31, 2023

Agenda Date Requested: February 6, 2023

To: Scappoose City Council

From: Isaac Butman, Assistant to City Manager;
Stephen Lougal, Chief of Police

Subject: Second First Reading; Ordinance 910, An ordinance relating to massage businesses, creating Scappoose municipal code chapter 5.20, Massage Facilities

TYPE OF ACTION REQUESTED:

☐ Resolution

☒ Ordinance

☐ Formal Action

☐ Report Only

ISSUE: On August 23, 2022, the Scappoose Police Department received an application for a business license from Pure Massage. During an investigation it was discovered that the business was in violation of several State and Local statutes, lacked certification from the state massage board, and it was alleged that members of its staff were offering sexual services to customers, **Exhibit A**. It became clear to the Police Department and City Staff that Scappoose Municipal Code lacks language sufficient to prevent the establishment of massage businesses that are used as a front for illicit activities.

On January 17, 2023, Staff brought a first reading of Ordinance 910 to City Council. Council asked for some changes to be addressed. After the Council meeting a number of public comments were received. Staff is representing Ordinance 910 on first reading due to the number of changes asked for, and the public comments received. Public Comment and a letter from the Oregon Board of Massage Therapists can be seen in **Exhibit B**.

ANALYSIS: Massage businesses have long been a front for illicit activities, including prostitution, human trafficking, and money laundering. Business licensing is controlled by local municipal governments and is one of the best ways to prevent illicit businesses from establishing themselves in a community.

Staff reached out to the State Massage Board and were given a sample ordinance and

guidance on best practices for preventing illicit massage businesses from establishing. The guidance can be seen in **Exhibit C**.

Staff drafted an ordinance, **Exhibit D**, to prevent illicit massage businesses from obtaining a business license in Scappoose, while balancing the needs of small businesses, by writing code that is not unnecessarily burdensome or costly. **Exhibit E** is a tracked change version of the originally proposed Ordinance 910.

Legitimate businesses can meet the requirements of this Ordinance while realizing minor impacts to the time it takes to complete a business license application. The majority of additional burden amounts to submitting diagrams of the business and submitting to a background check to ensure no records indicating that applicants engage in illicit activities.

Staff will be asking that applicants be required to pay a nominal fee of \$30 to process each background check; this is slightly less than the fee the Oregon State Police charge for a background check and is simply cost recovery for the additional costs to conduct the background check and write a report for the applicants' file. Staff will bring a Resolution before Council on this matter if this Ordinance is adopted.

This language has been reviewed by the Police Department and Legal Counsel. If adopted, this ordinance would be one of the first, if not the first, preventative local ordinance of its kind in the State of Oregon.

Changes: Council asked for a number of changes to Ordinance 910, and it was brought to staff's attention by public comment that some definitions were not in alignment with the State of Oregon, and Oregon State Board of Massage Therapists. The majority of changes made align the Ordinance with existing State language and guidance that the Oregon State Board of Massage Therapists use in their compliance processes.

Staff made the following changes:

- Changed the "Whereas" clauses to more completely explain why this ordinance is important and why it is being considered for adoption.
- Changed the definition of "Massage" and "Licensed Massage Therapist" (LMT) to align with State of Oregon and Oregon State Board of Massage Therapists language.
- Added that applicants must substantiate that all employees who will or might give massages are appropriately licensed with the State of Oregon.
 - Added a category for denial based on business practices allowing non-LMT's to perform massage in contravention of state law.
- Added a section on Compliance Checks to be done during the business licensing process:
 - Reorganized the Ordinance to better explain the background check process.

- Clarified who will be subject to or exempt from background checks.
 - Clarified that Police Department Staff will be responsible for conducting the background check and license review.
 - Clarified that the Chief of Police will be the ultimate decision maker as to the passage or failure of the background check/license verification.
 - Exempts LMT's who, within the past three years, have had a background check as part of obtaining their LMT, from the initial background check.
 - Clarified that only criminal history that has a demonstrable relationship to the practice of massage may be considered during the process and offered a representative listing of the types of crimes that will be looked for.
 - Added criteria to look at during the approval process and clarified the list of mitigating circumstances for the Scappoose compliance check process. The criteria and mitigating circumstances in the Ordinance were aligned with the Oregon State Board of Massage Therapists requirements.
 - Outlined the appeals process for applicants that may be denied a license, as described by the Business License Municipal Code section; Chapter 5.04.100.
- Aligned exemptions from the Ordinance to exemptions that are used by the Oregon Board of Massage Therapists to determine who needs or does not need a facility permit.
 - Corrected some scrivener's errors, and minor clarifications to the text.

Fiscal Impacts: The largest fiscal impact of this ordinance causes is the cost to complete background checks for applicants. Each background check and written report will take 10-20 minutes to complete. The City of Scappoose does not currently charge a business license fee that could help offset this additional cost. Without assessing a background check fee there are no cost recovery options for the additional time and costs associated with the enhanced review required by this licensing process.

RECOMMENDATION: Staff recommends Council approve Ordinance 910, an ordinance relating to massage businesses, creating Scappoose municipal code chapter 5.20, Massage Facilities.

SUGGESTED MOTION: I move Council adopt Ordinance 910, an ordinance relating to massage businesses, creating Scappoose municipal code chapter 5.20, Massage Facilities, as written.

To: City Manager Alexandra Rains
From: Chief Steven Lougal
Subject: Pure Massage Appeal
Date: November 28, 2022

Alexandra:

On August 23, 2022, I received an application for business from Pure Massage, located at 52561 Columbia River Hwy Scappoose, Oregon, 97056.

Initial Observation

Shortly after receiving the application, I searched online and observed a welcoming web page. The site was professional. I then drove by the business and noticed the web page did not match the business. Tints and some cloth covered the windows and doors. Having over twenty-five years of law enforcement experience, I believed Pure Massage was engaging in illicit behavior.

Investigation

Due to my experience, I started an investigation, all of which is still active and occurring, so the information I provide is limited but more than enough to issue a denial. During my investigation, I observed women being picked up and dropped off with food and luggage. The women were living there and, from time to time, had an overnight guest. I then personally spoke

to males who left the establishment and confirmed they were offered illegal sexual services.

There is also currently pending action from the Oregon Massage Board. I can also confirm that the massage board has not licensed the business, and none of the practitioners are licensed.

The current owners are involved in four other known massage parlors and have been investigated by the massage board in previous complaints. Please see the attached that is readily available on the massage board's website:

Green SpaFLE-185192515

Green SpaFLE-185192591

Green SpaFLE-185192811

Green SpaFLE-185193105

Huang, Andy FLE-162262613

Huang, Andy LEP-257952920

Huang, Andy N LEP-0232772733

Huang, Andy N LEP-0232772676

Lotus SpaFLE-243703082

Lotus SpaFLE-243703240

An internet search will show that Jianhua Tang is the listed owner of Marina Spa in Portland, Oregon, located on Marina Drive. Jianhua Tang is also the listed owner of the business license under appeal in Scappoose. Jianhua Tang is not licensed, nor does she have a valid

facility permit and thus cannot legally be the owner/operator of the facility. Both spas have pending cases with the Massage Board.

Andy Huang is the emergency contact for Pure Massage in Scappoose. In addition, Andy Huang is the listed owner of Green Spa and Lotus Spa in Bend, Oregon. Both of which have been sanctioned.

We currently have the following criminal violations:

As far as the criminal code goes, ORS 687.991 states: 687.991 Criminal penalties. (1) Violation of ORS 687.021 or of any rule adopted under ORS 687.121 is a Class A misdemeanor. (2) Violation of ORS 687.410 is a Class A misdemeanor. [1955 c.492 §14; 1977 c.507 §15; 2003 c.547 §27]

ORS 687.021 reads: 687.021 Practice of massage without license prohibited; operation of massage facility without permit prohibited; injunction against violation. (1) A person may not:

(a) Engage in or purport to engage in the practice of massage without a massage therapist license issued by the State Board of Massage Therapists under ORS 687.051.

(b) Operate a massage facility or purport to operate a massage facility without a permit issued by the board under ORS 687.059, unless the person is an individual massage therapist who is working out of the individual's home.

(c) Advertise that the person engages in the practice of massage unless the person is licensed under ORS 687.051 or holds a permit under ORS 687.059.

(d) Use the word “massage” in a business name unless the person is licensed under ORS 687.051 or holds a permit under ORS 687.059.

(2) The board may exempt by rule a type of massage facility from the prohibition in subsection (1)(b) of this section if the board finds that requiring a permit for that type of facility is not necessary to regulate the practice of massage therapy or to protect the health and safety of the public.

(3) The Attorney General, the prosecuting attorney of any county or the board may maintain an action for an injunction against a person violating this section. An injunction may be issued without proof of actual damages sustained by a person. An injunction does not relieve a person from criminal prosecution for violating this section or from any other civil, criminal or disciplinary remedy.

Based on the provided information, I request the appeal be denied in full in accordance with Scappoose Municipal Code 5.04.090(B)(1). Information will be provided by the massage board later, sometime in January. Please see the attached workflow sheet of prior cases. This should also support a full denial.

Respectfully,

Chief Steven Lougal

Exhibit B

Isaac Butman

From: Shelby Fagan <shelbyfagan@gmail.com>
Sent: Sunday, January 22, 2023 10:24 AM
To: Joe Backus; Megan Greisen; Kim Holmes; Andrew LaFrenz; Pete McHugh; Tyler Miller; Jeannet Santiago; Steven Lougal; Isaac Butman; Alexandra Rains; Susan Reeves
Subject: [External] Oppose ordinance 910-public comment
Attachments: favicon.ico

CAUTION: This email is from outside the City of Scappoose. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

My name is Shelby Fagan, I am a native Scappoose resident of 46 years. I am a wife, mother, and a Licensed Massage Therapist of 25 years. I owned and operated a successful sports and medical massage practice for 23 years in the Portland area until covid policies forced my clinic to close. I also operated a second satellite office within a physical therapy clinic here in Scappoose for a short time back in 2012 in which Susan Reeves can attest to as she assisted me with my business license. I am writing today urging you to oppose ordinance 910 you are considering imposing solely on massage therapy businesses in Scappoose. It's well intended but very misguided.

Licensed Massage Therapists are already regulated and governed by the State of Oregon. LMTs have certain qualifications to meet and undergo a criminal background check and have several fees to pay to obtain and renew our state license. Legitimate massage therapy businesses in Scappoose do not need an additional ordinance and fee imposed on them for a background check and requirements that has already been met. It takes less than 2 minutes to verify the status of a massage license, services they perform, and any disciplinary actions of a licensee on the Oregon State Board of Massage Therapists (OBMT) [website](#). It should be the City's responsibility to vet all businesses, rather than target legitimate massage practitioners and their small businesses based on the act of an imposter and its illegal businesses. Did the City of Scappoose do its due diligence and proactively take the 2 minutes to verify the legitimacy of this business with the Sec. of State and the OBMT? Why was the 'massage' business allowed to operate initially if it can be "confirmed that the massage board has not licensed the business, and none of the practitioners are licensed" as stated by Chief Lougal in Exhibit A? Not proactively verifying this business with the state, and allowing this business to operate for as long as it did in our community only strengthens the stigma you describe in your analysis that professional LMTs like myself have been trying very hard to change for years. Human traffickers and prostitutes use the word 'massage' to bypass unenforced laws to conduct their illegal activities. Prostitutes and human traffickers are outside the massage therapy profession, not a part of it. This knee-jerk ordinance will create unnecessary burden, targeting and profiling a profession of law abiding licensed massage therapists based on the actions of a business that illegally ([ORS 687.021](#)) used "massage" in its name that employed **ZERO** licensed massage therapists.

Also, the language and definitions in your proposed ordinance does not align with the State of Oregon's [ORS 687](#) definitions and standards of Oregon massage therapists. The City of Scappoose cannot change or lower the standards and definitions of a licensed massage therapist or its practice based on the City of Colorado Springs Ordinance. Colorado may have laxer laws, rules, and policies for their LMT's. If you want to be the first city to impose such an ordinance on a specific business in Oregon, then please do your due diligence and align with the Oregon laws already in place for that profession. For Example:

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- City of Scappoose 5.20.010 Definition:
-

(C) "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.

(E) "Massage therapist" means **Any person** who administers or offers to administer to another person, for any form of consideration or hire, a massage.

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- ORS 687.011 Definitions
-

(4) (a) "Massage," "massage therapy" or "bodywork" means the use of pressure, friction, stroking, tapping or kneading on the human body, or the use of vibration or stretching on the human body by manual or mechanical means or gymnastics, with or without appliances such as vibrators, infrared heat, sun lamps or external baths, and with or without lubricants such as salts, powders, liquids or creams, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition.

(b) "Massage," "massage therapy" and "bodywork" do not include the use of high-velocity, short-amplitude manipulative thrusting procedures to the articulations of the spine or extremities.

(5) (a) "Massage facility" means a facility where a person engages in the practice of massage

(6) "Massage therapist" means a **person licensed** under ORS 687.011 to 687.250, 687.895 and 687.991 to practice massage.

I wholeheartedly agree steps need to be taken to prevent illegal businesses from establishing themselves in our community, but targeting law abiding massage therapists and their business is not equal and inclusive when really any business or governmental entity could be a potential front of illicit activities. This ordinance is misguided and a disservice to the massage therapist's who are being targeted and misrepresented. Please oppose ordinance 910. I am happy to discuss this further with anyone inclined to reach out. Below are some links and resources help educate you about massage therapists in Oregon.

**Oregon State Board of Massage
Therapists : Welcome Page : State of
Oregon**
oregon.gov



**Oregon State Board of Massage
Therapists : Licensing Information :
State of Oregon**
oregon.gov



OBMTPublic - Public Record Search
orlicensing.oregon.gov



**Oregon State Board of Massage
Therapists : Laws, Rules & Policies :
State of Oregon**
oregon.gov





Respectfully,

Shelby Fagan, LMT
OBMT #6658
503-267-7659



Oregon

Tina Kotek, Governor

Board of Massage Therapists

610 Hawthorne Ave SE, Suite 220

Salem, OR 97301

Phone: (503) 365-8657

Fax: (503) 385-4465

www.oregon.gov/OBMT

January 24, 2023

Greetings,

The Oregon Board of Massage Therapists supports anti-human trafficking and anti-sex trafficking efforts in general and specifically as it relates to the massage industry and profession. The illicit massage industry is known as one of the largest and most networked sex trafficking markets in the world. The licit massage businesses operate in plain sight, masquerading as legitimate massage professionals while conducting dangerous and illegal massage and sexual services. The Board is dedicated to the reduction and elimination of illicit massage facilities in the State of Oregon and beyond, and supports those persons victimized by the illicit practices.

The Board encourages and supports local governments, law enforcement, prosecutors, non-profit organizations, victim assistance agencies, and other organizations who are diligently working to detect, prevent, and prosecute traffickers and their organizations, and those organizations who support and assist the victims and survivors of the trafficking industry.

The Board recognizes that the OBMT cannot resolve the illicit massage industry and its human trafficking components alone. It is estimated that there are approximately 177 illegal illicit massage business operating in Oregon today. Eliminating these illicit massage businesses will require a cooperative, multi-agency approach that includes State and local governments, law enforcement, prosecutors, community service providers, and the public. It will take education, prevention, and enforcement efforts to resolve this situation and hopefully eliminate these illicit massage businesses from Oregon.

Robert Ruark,

Executive Director
Oregon Board of Massage Therapists

Successful Massage Ordinance Factors

September 2021

Cities that have successfully used ordinances to create an inoperable environment for illicit massage businesses (IMBs) as part of their anti-human trafficking efforts have a balance of effective prevention and strong enforcement measures. First, they focus on preventing the initial establishment of IMBs via rigorous application processes that check applicants' backgrounds and certify their licenses. Second, they implement swift, tough corrective measures for ordinance violations to sustain impact. The Network reviewed massage ordinances from cities around the country and conducted interviews with police departments, city councils, and code enforcement officials to find the common elements in jurisdictions that have deterred IMBs from operating there. To add rigor, we checked the claims of local officials and media reports against our own data: cities with highlighted successes below are those where our data shows either the significant reduction or the elimination of IMB presence since the passage of their ordinances.

ORDINANCE PROVISIONS

According to our research and interviews, ordinances contain provisions that generally fall into two equally important categories: preventing the opening of IMBs via a thorough application process, and/or attempting to regulate characteristics and behaviors associated with IMBs.

1. Characteristic/Behavior-based components: These elements¹ regulate the characteristics and behaviors that set IMBs apart from legitimate massage businesses to create an inoperable environment for storefronts selling commercial sex, or at least to provide legal grounds to inspect and investigate suspect enterprises. Jurisdictions often seek to prohibit behaviors known to be red flags for IMBs such as late operating hours, ads placed on websites catering to commercial sex buyers, and/or workers living onsite.
2. Preventative components: These elements focus on a rigorous application process with background checks and stipulate that massage businesses must satisfy certain requirements to obtain a local license before opening. This allows law enforcement to check for criminal history, verify state massage licenses and other credentials, and ensure that the businesses—and the names and phone numbers affiliated with them in the applications—are not advertising illegal services on adult-entertainment websites.²

PREVENTATIVE ELEMENTS

Jurisdictions with solid preventative measures have reported that suspected IMBs either voluntarily dropped out of the application process or closed once an ordinance was passed, even before enforcement mechanisms went into effect. While local licensing requirements vary, a best practice is to confirm that all employees—not just the owner on record—are licensed, do not have criminal records related to prostitution or human trafficking, and are not affiliated with illicit activities elsewhere, including in online commercial sex ads. In some locations, massage business owners wishing to obtain a license must appear in person to submit their credentials and plan or accept a home visit and interview. Another best practice is to request timely notification of all personnel changes that includes new employees' licensing information, as IMBs frequently rotate their employees.

- In 2016, Johnston, Iowa implemented an ordinance³ requiring an application process that details the credentials and backgrounds of all employees who will be working at the location, including massage license numbers issued by the state. In addition, the application is followed up by an in-person interview. The Network could find no IMBs listed on sex buyer review sites for Johnston since 2016.
- The California Massage Therapy Council (CAMTC) recommends that businesses be required to keep updated lists with their city authorities of all personnel, instead of only massage therapists, as unlicensed workers sometimes claim to be cleaning crews, cooks, or receptionists during inspections or law enforcement operations. CAMTC also recommends that businesses be required to keep original copies of all licenses on premises to avoid the illegal copying/duplication of credentials: something multiple state massage boards have noted as a persistent problem.
- In Woodstock, Georgia, a pre-licensing inspection at one business in 2018 turned up an unlicensed worker, 2 naked clients, and other violations—all before a license to operate had been granted. The city ultimately denied the owner's application to operate within city limits.⁴ While most pre-licensing inspections are less eventful, they often uncover red flags that help city officials make informed decisions.

ENFORCEMENT-FOCUSED PROVISIONS

It is often difficult to close IMBs once they have opened and doing so can take significantly more time and resources than preventing them from opening in the first place. Depending on the laws, even if owners and employees are committing multiple code violations, the business may be subject only to small fines or other penalties that lack the severity to close it. Additionally, law enforcement may not be authorized to enter or inspect businesses without probable cause, leaving them dependent on citizen tips to investigate suspect locations. Our analysis indicates that ordinances that allow unannounced city inspections, and contain swift and meaningful accountability measures when violations are identified, have been the most impactful.

- In several Des Moines suburbs, businesses where unlicensed workers are caught giving massages are immediately closed and a placard telling customers that the business may not operate until it has obtained the necessary licenses is posted.⁵
- In Cedar Rapids, Iowa, multiple massage businesses were closed in the first half of 2019 for further investigation after police found indications of illicit activity online.^{6 7} The Network's data shows a nearly 60% drop in IMBs in Cedar Rapids since its ordinance passed in November 2018.
- In Aurora, Colorado, multiple IMBs predated the passage of its ordinance in May 2018. By allowing the city to close businesses for committing certain violations, such as operating without a license, Aurora closed 18 IMBs within a year after its regulations went into effect, according to local media reports. According to our data and interviews, in the past three years Aurora has achieved at least a 93%, and likely a 100%, closure rate.

OVERCOMING CHALLENGES TO BUILD SUSTAINABLE INITIATIVES

In our research, we found two main challenges that can undermine even well-written ordinances: (1) Enforcement that is not sustained in the long term, sometimes often due to the turnover of key leaders in the police department or local government; and (2) Displacement

effects inadvertently increase IMB presence in neighboring communities. Both challenges are surmountable.

- Continuous enforcement: Interviewees from multiple states indicated that the success of ordinances depended on sustained enforcement. In some cases, once an initial champion retired or changed roles, successors did not prioritize these regulations, creating an environment for the re-entry of IMBs. In some places, annual reviews or inspections are mandated in the regulations to try and ensure longevity.
 - Cities like Springboro, Ohio and Johnston, Iowa review massage businesses each year; this allows them to practice a 2-zone defense where some businesses are prevented from opening, while those that open in disregard of local regulations are more likely to be identified and closed quickly.
 - Troy, Michigan reduced its IMB presence from 4 in November 2017, the date of its ordinance, to 1 as of August 2021. The city has taken a proactive approach to enforcement, judging from local media coverage.⁸
 - Roswell, Georgia was an early adopter of a massage ordinance in 2004, but according to local media,⁹ is aware that results have not been maintained long-term and its city council has discussed the need for stricter licensing requirements. As of August 2021, Roswell had 15 IMBs, according to our data.
- Enlisting allies to prevent spillover effects: Some cities that had significant initial success with their ordinances heard complaints of increased IMBs in neighboring communities due to displacement. Subsequently, these jurisdictions began engaging in outreach¹⁰ to encourage and assist their neighbors in joining their efforts, broadening the impact by creating larger geographic areas with shared initiatives. However, regional efforts are only as effective as their weakest link, so it is essential to have all cities equally committed to tested prevention and enforcement mechanisms.
 - After Aurora's ordinance went into effect, some IMBs simply moved to Denver and its other suburbs.¹¹ In response, officials in Aurora assisted neighbors with developing their own responses across the greater Denver metro area. Several other suburbs passed ordinances modeled on Aurora's the following year,¹² as did the City of Denver in July 2021.
 - Multiple suburbs of Dayton, Ohio, passed similar ordinances between 2018 and 2020.¹³ The cities of Kettering and Springboro, among others, now require application processes with background checks, unannounced inspections, and requirements for the state licensing of all employees. Kettering and Springboro had no IMBs as of August 2021, according to our data.

SUMMARY OF BEST PRACTICES

The combination of strong pre-emptive processes and sustained, impactful enforcement has met with success in both large and small cities. We encourage communities that have met with success to continue assisting others in developing regulations and enforcement plans based on lessons learned. Based on our research, The Network highlights the following best practices:

- City inspectors should be able to make unannounced visits to suspected IMBs, as is done with health code inspections of restaurants, hotels, and other types of businesses; pre-scheduling allows for the moving of workers and the hiding of evidence.

- City officials should be empowered to close businesses on the spot for certain violations, such as unlicensed employees giving massages, sexual activity, and evidence of women living on premises.
- Ordinances should require that the city be notified of personnel changes promptly, given the frequent rotation of victim workers in IMB settings.
- When neighboring communities present a unified front, it is harder for sex buyers to easily find nearby IMBs.
The larger the covered geographic area, the harder it will be for IMBs to retain their clients.
- Communities may want to study options for information-sharing about applicants who have been denied licenses or shut down due to criminal activity and/or false statements in other jurisdictions. Interviewees told us that applicants affiliated with IMBs have lied about past arrests and license revocations on their paperwork. Some states lack statutes that would allow cities to access federal information for background checks; amending this would help identify traffickers as they move between states and allow for the tracking of broader patterns and histories of their criminal enterprises.
- The passage—or pending passage—of a well-crafted ordinance coupled with a good public messaging campaign can have a strong preventative effect: officials from multiple cities reported that some suspected IMBs voluntarily closed prior to enforcement.^{13 14}
- Ordinances can be combined with other anti-IMB efforts. Billings, Montana had already reduced its IMBs by a third via a landlord engagement project in the two years prior to passage of its ordinance.

References

¹ <https://www.ktvq.com/news/local-news/billings-city-council-passes-massage-ordinance-designed-to-fight-human-trafficking>

² <https://iowanaht.org/wp-content/uploads/Johnston-Massage-Therapy-Ordinance-Case-Study-Examples-2016-17.pdf>

³ <https://www.cityofjohnston.com/DocumentCenter/View/4111/Massage-Therapy-Business-License-Ordinance-Revision---Ordinance-No-980?bidId=>

⁴ https://www.tribuneledgernews.com/ledger/july-massage-denied-business-license-after-violations/article_3852e320-b761-11e8-8c35bf81cf03e980.html

⁵ <https://www.desmoinesregister.com/story/news/2018/12/17/massage-therapists-iowa-state-license-work-des-moines-prostitution-humantrafficking-beaverdale/2342923002/>

⁶ <https://cbs2iowa.com/news/local/cedar-rapids-discovers-non-compliant-massage-businesses-through-new-ordinance>

⁷ <https://www.kcrg.com/content/news/Two-businesses-advertising-massages-accused-of-prostitution-561481971.html>

⁸ <https://www.candgnews.com/news/seven-arrestedin-connectionwith-prostitution-at-troy-massage-parlor-107951>

⁹ <https://www.ajc.com/news/local/alpharetta-clarifies-business-rules-for-spas-massage-parlors/X78mNLPfJapbvjJYPuzsKJ/>

¹⁰ <https://apnews.com/article/a98f20c023e7478288f3e7b3bec2cd13>

¹¹ <https://www.9news.com/article/news/investigations/businesses-shut-down-for-suspected-human-trafficking-in-aurora-reopen-just-a-fewmiles-away/73-555df664-b8de-404a-92b2-0e32ad7be92f>

¹² <https://krdo.com/news/2021/05/06/colorado-cities-find-success-with-ordinances-aimed-to-shut-down-illicit-spas/> ¹³ <https://www.daytondailynews.com/news/beavercreek-cracking-down-on-sex-trafficking-with-new-massage-parlorlegislation/4MAQECVH3JGDTNEOHMKYUE5WEE/>

¹³

https://destinyhosted.com/bilmtdocs/2021/CCWS/20210119_1132/7820_MESSAGE_BUSINESS_LICENSE_ORDINANCE_DRAFT__1.15.2021.pdf

¹⁴ <https://www.eastbaytimes.com/2015/04/27/santa-clara-county-cracks-down-on-massage-parlors/>

ORDINANCE NO. 22- ____

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

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

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

PART 1: MASSAGE BUSINESSES

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

2.3.101: DEFINITIONS:

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

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

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

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

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

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

SPECIFIED ANATOMICAL AREAS:

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

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

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

2.3.102: MESSAGE BUSINESS LICENSE REQUIRED; TRANSFERABILITY:

A. On or after September 1, 2022, it shall be unlawful for any person to operate a massage business without possessing a valid massage business license for each premises where the massage business operates.

B. Each massage business license shall specify the name under which the licensee is to operate, the address of the principal place of business, the expiration date, the number of the license, and any other information the City Clerk deems necessary.

C. The massage business shall display the license in a conspicuous place readily visible to persons entering the licensed premises.

2.3.103: APPLICATION REQUIREMENTS; BACKGROUND CHECKS:

A. In addition to the requirements set forth in article 1, part 4 of this chapter, the application for a massage business license shall include:

1. The full name and any other names under which each equity holder of the applicant is or has been known and the residence address, telephone number, and date of birth of each equity holder of the applicant;

2. A description of the specific types of services to be rendered;

3. Documentary evidence that the officers, equity holders, and managers of the applicant are at least a minimum of eighteen (18) years old;

4. Documentary evidence that the applicant has or will have possession of the premises to be licensed during the term of the license by ownership, lease, rental, or other arrangement;

5. A statement identifying the zone district of the premises; and

6. A detailed diagram showing the configuration of the premises to be licensed as follows:

a. The diagram shall be no larger than eight and one-half inches by eleven inches (8½" x 11");

b. The diagram shall include the dimensions and total square footage of the premises to be licensed but does not need to be drawn to scale;

c. The diagram shall designate the use of each room or other definitive area of the premises to be licensed;

d. The diagram shall show the type of control of the exterior areas of the premises to be licensed, including, without limitation, fences, walls, and entry/exit points;

e. If the premises to be licensed consists of multiple levels, a separate diagram shall be filed for each floor; and

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

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

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

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

D. In the event the Licensing Officer takes into consideration information concerning the applicant's, principal's, managing agent's, and equity holder's criminal history record, the Licensing Officer shall also consider any information provided by the applicant or licensee regarding the criminal history record, including, but not limited to, evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license or renewal.

2.3.104: FEES AND TERM:

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

2.3.105: EXEMPTIONS:

The licensing requirements of this article do not apply to:

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

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

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

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

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

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

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

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

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

1. Practices using reflexology, auricular therapy, and meridian therapies that affect the reflexes of the body;
2. Practices using touch, words, and directed movements to deepen a person's awareness of movement patterns in his or her body, such as the Feldenkrais method, the Trager approach, and body-mind centering;
3. Practices using touch or healing touch to affect the human energy systems, such as reiki, shiatsu, and meridians;
4. Structural integration practices such as Rolfing and Hellerwork; and
5. The process of muscle activation techniques.

2.3.106: DENIAL, SUSPENSION, OR REVOCATION OF LICENSE:

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

1. Has made a willful misrepresentation in applying for and obtaining a license;
2. Has been previously denied a license under this part or has had a license issued under this part suspended or revoked;

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

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

2.3.107: UNLAWFUL ACTS; VIOLATIONS:

- A. It shall be unlawful for any person to:
1. Directly or indirectly, personally or through an agent or employee, conduct any massage business, or to use in connection with the massage business any premises, in whole or in part, without possessing a valid massage business license for each premises where the massage business operates.
 2. Make a willful misrepresentation in applying for or obtaining a massage business license.
 3. Flee, attempt to flee, or elude inspection pursuant to this part.
- B. It shall be unlawful for any principal or managing agent of a massage business to:
1. Employ any person as a massage therapist or to allow any person to work as a massage therapist in a massage business who does not possess both a valid government-issued, photographic identity card and a massage therapist license.
 2. Encourage, permit, or tolerate any massage therapist to engage in specified sexual activities or to expose the massage therapist's specified anatomical areas within the premises.
 3. Fail to keep records as required by this part or fail to permit inspection of records as required by this part.

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

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

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

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

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

2.3.108: RECORDS; INSPECTIONS:

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

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

2.3.109: NOTICE OF UNLICENSED MASSAGE BUSINESS:

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

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

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

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

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

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

Finally passed: _____

Council President

Mayor's Action:

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

Mayor

Council Action After Disapproval:

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

Council President

ATTEST:

Sarah B. Johnson, City Clerk

Exhibit D

ORDINANCE NO. 910

AN ORDINANCE RELATING TO MASSAGE BUSINESSES, CREATING SCAPPOOSE MUNICIPAL CODE CHAPTER 5.20, MASSAGE FACILITIES

WHEREAS, The illicit massage industry is known as a large and well-networked human trafficking market; and

WHEREAS, The Scappoose Police Department, the City of Scappoose, and the Scappoose City Council find human trafficking to be a violation of the Constitution of the United States, the Constitution of the State of Oregon, and a violation of the laws of the United States and the State of Oregon; abhorrent, akin to slavery, and utterly against the morals of the community of Scappoose; and

WHEREAS, The Scappoose Police Department became aware of massage businesses in Scappoose engaged in illicit activities; and

WHEREAS, The Scappoose Police Department, the City of Scappoose, and the Scappoose City Council are committed to the safety, health, and general welfare of all persons within the City of Scappoose; and

WHEREAS, the City of Scappoose, the Scappoose Police Department, and the Scappoose City Council find it in the best interest of the public, and in the interest of the public's health, safety, and general welfare, to prohibit businesses who engage in illicit activities from obtaining a business license in the City of Scappoose.

NOW THEREFORE, THE COUNCIL OF THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

- (1)** Chapter 5 of the Scappoose Municipal Code is hereby amended as indicated in Exhibit A, attached hereto and hereby incorporated by reference.
- (2)** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.
- (3)** This ordinance is effective 30 days after passage.

PASSED AND ADOPTED by the City Council this ____ day of _____, 20 ____, and signed by the Mayor and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON

Joseph A. Backus, Mayor

First Reading:
Second Reading:

Attest: _____
Susan M. Reeves, MMC, City Recorder

Exhibit A

Chapter 5.20 **MASSAGE FACILITIES**

Sections:

- 5.20.010 Definitions
- 5.20.020 City of Scappoose Massage Business License Required
- 5.20.030 Application Requirements
- 5.20.040 Compliance Checks
- 5.20.050 Fees and Term
- 5.20.060 Exemptions
- 5.20.070 Denial, Suspension, or Revocation of License
- 5.20.080 Unlawful Acts
- 5.20.090 Records and Inspections
- 5.20.100 Notice of Unlicensed Massage Business and Violation

5.20.010 DEFINITIONS

- (A) “Advertise” means to publish, display, or disseminate information and includes, but is not limited to, the issuance of any card, sign, or direct mail, or causing or permitting any sign or marking on or in any building or structure or in any newspaper, magazine, or directory, or any announcement or display via any televised, computerized, electronic, or telephonic networks or media, including advertising through internet sites, online bulletin boards or internet forums.
- (B) “Equity holder” means any natural person who is a shareholder, partner, member, trustee, or other principal owner of the massage business, who owns ten percent (10%) or greater financial interest in the massage business, whether directly or through any number of holding entities, partnerships, or trusts.
- (C) “Massage,” means the use of pressure, friction, stroking, tapping or kneading on the human body, or the use of vibration or stretching on the human body by manual or mechanical means or gymnastics, with or without appliances such as vibrators, infrared heat, sun lamps or external baths, and with or without lubricants such as salts, powders, liquids or creams, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition.
- (D) “Massage business”: means a facility where a person engages in the practice of massage in exchange for any form of consideration except as provided in section 5.20.050 of this Section.
- (E) “Licensed Massage Therapist” means a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991 to practice massage.

- (F) “Specified anatomical areas” means less than completely and opaquely covered human genitals, pubic region, buttocks, and breast below a point above the top of the areola; and/or, human genitals in a discernible turgid state even if completely and opaquely covered.
- (G) “Specified sexual activities” means acts, simulated acts, exhibitions, representations, depictions, or descriptions of any type of sexual activity. This includes: “sexually explicit conduct” as defined by the 2021 ORS 163.665 (3); “Sexual Contact” and “Sexual intercourse” as defined by the 2021 ORS 163.305; and “Sexual Conduct” and “Sexual Contact” as defined by the 2021 ORS 167.002.

5.20.020 CITY OF SCAPPOOSE MESSAGE BUSINESS LICENSE REQUIRED

- (A) On or after the date of enactment of this Ordinance, it shall be unlawful for any person to operate a massage business without possessing a valid massage business license for each premises where the massage business operates. Business operating with a valid City of Scappoose Business License at the time of enactment will need to complete the Massage Business License Addendum when they renew their business license, but do not need to complete the addendum until their business license expires.
- (B) Each massage business license shall specify the name under which the licensee is to operate, the address of the principal place of business, the expiration date and number of the driver’s license, and any other information the City Manager, or their designee, deems necessary.
- (C) The massage business shall display the massage business license in a conspicuous place readily visible to persons entering the licensed premises.

5.20.030 APPLICATION REQUIREMENTS

- (A) In addition to the requirements set forth in Scappoose Municipal Code, Chapter 5.04, the application for a massage business license shall include all of the following:
 - (1) The full name and any other names under which each equity holder of the applicant is or has been known and the residence address, telephone number, and date of birth of each equity holder of the applicant.
 - (2) A description of the specific types of services to be rendered.
 - (3) Documentary evidence that the officers, equity holders, and managers of the applicant are at least a minimum of eighteen (18) years old.
 - (4) Documentary evidence that the applicant has or will have possession of the premises to be licensed during the term of the license by ownership, lease, rental, or other arrangement.

- (5) Documentary evidence that any massage therapists working at or for the business giving massages are or will be appropriately licensed with the Oregon State Board of Massage Therapists.
- (6) A detailed diagram showing the configuration of the premises to be licensed as follows:
 - (a) The diagram shall be no larger than eight and one-half inches by eleven inches (8 1/2" x 11");
 - (b) The diagram shall include the dimensions and total square footage of the premises to be licensed but does not need to be drawn to scale;
 - (c) The diagram shall designate the use of each room or other definitive area of the premises to be licensed;
 - (d) The diagram shall show the type of control of the exterior areas of the premises to be licensed, including, without limitation, fences, walls, and entry/exit points;
 - (e) If the premises to be licensed consists of multiple levels, a separate diagram shall be filed for each floor; and
 - (f) The premises to be licensed shall be outlined in bold.
 - (g) The City Manager, or their designee, may waive the site diagram for renewal applications if the applicant adopts a diagram that was previously submitted, certifies that the configuration of the premises has not been altered since it was prepared and that the use of any area or room in the premises has not changed.

5.20.040 Compliance Checks

- (A) Certain parties related to, or working for, the business, as outlined below, will need to submit to a background check and verification of standing with the Oregon State Board of Massage Therapists.
- (B) Individuals required to go through this process will need to submit a notarized background check form along with the application, allowing the Scappoose Police Department to conduct a criminal background check and verify their standing with the Oregon State Board of Massage Therapists, and pay the associated background check fee, which can be found on the City of Scappoose fee schedule. Background checks and verifications shall be conducted by Scappoose Police Department Staff. The Police Chief shall be the final decision maker on the passage or failure of the background check and license verification.
- (C) City Staff can notarize the background check authorization form for applicants at no charge. A determination about the necessity of employees submitting background checks will be made after the initial business license application is submitted to the City of Scappoose.

(D) Individuals who need to submit to a background check and/or license verification with the Oregon Board of Massage Therapists:

- (1) Each applicant, principal, managing agent, and equity holder.
- (2) Any partner, equity holder, manager, employee, or potential employee, who will or might be conducting massage will need to complete the background check form to allow the Scappoose Police Department to verify the status of their license with the Oregon State Board of Massage Therapists. There will be no fee associated with license verifications.
- (3) Other employees not listed here may be required to submit to the background check, and/or the license verification, at the discretion of the Chief of Police or their designee. The reasoning shall be put in writing, transmitted to the applicant via writing and email, and the applicant shall have 15 days to submit the appropriate paperwork.

(E) Exemptions from the background check requirement.

(1) Licensed Massage Technicians who:

- (a) Have successfully completed a background check to receive their LMT license within the last three years; and
- (b) Who can substantiate that the background check occurred; and
- (c) Successful passing of that background check can be substantiated by the Scappoose Police Department,

Do not need to submit to the initial background check or the associated fees but will need to submit to verification of their license as described above.

(F) Once an initial background check has been completed, applicants, principals, managing agents, equity holders, Licensed Massage Therapists, and potentially, employees, are not subject to Business License Application background checks required in this section for three (3) years.

(G) New applicants, principals, managing agents, equity holders, Licensed Massage Therapists, and potentially, employees, are subject to background checks under this Section when Business License Renewals are submitted to the City of Scappoose. Failure to disclose new applicants, principals, managing agents, equity holders, and potentially, employees, may be a violation as defined in 5.20.090(b) and subject to associated penalties.

(H) Criminal history, any conviction or guilty plea to a charge based upon acts that bear a demonstrable relationship to the practice of massage or operation of a massage facility will be considered during the business licensing process. Acts related to violence, weapons, substance abuse or narcotics, sexual misconduct or prostitution related misconduct of any

kind, and human trafficking, regardless of the jurisdiction in which the act was committed, may be considered in a decision to grant, renew, revoke, or suspend the license.

(I) Criteria and Mitigating Circumstances.

(1) In making the determination of successful passing of a background check the Scappoose Police Department must consider:

- (a) The nature of any crimes;
- (b) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
- (c) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
- (d) Any other pertinent information requested or obtained as a part of this background check process;
- (e) The Police Department may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.
- (f) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:
 - I. The passage of time since the commission of the crime;
 - II. The age of the subject individual at the time of the crime;
 - III. The likelihood of a repetition of offenses or of the commission of another crime;
 - IV. The subsequent commission of another relevant crime;
 - V. Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - VI. A recommendation of an employer.

(J) In the event the Chief of Police, or their designee, takes into consideration information concerning the applicant's, principal's, managing agent's, and equity holder's criminal history record, the Chief of Police or their designee, shall also consider any information provided by the applicant or licensee regarding the criminal history record, including, but not limited to, evidence of mitigating factors, rehabilitation, character references, and

educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license or renewal.

- (K) If an applicant or licensee is determined to not be fit for a massage business license, the applicant or licensee is entitled to a hearing in front of the Scappoose City Council as described in Scappoose Municipal Code Chapter 5.04.100. Challenges to the accuracy of completeness of information provided by outside agencies reporting information must be made with the outside agency.

5.20.050 FEES AND TERM

Fees shall be as established by City Council and shall be listed on the City of Scappoose fee schedule. Fees shall not be refundable for any reason.

5.20.060 EXEMPTIONS

The licensing requirements of this article do not apply to:

- (A) Persons licensed under any other law of this state to do any acts included in the definition of massage in ORS 687.011 or persons working under the direction of any such person.
- (B) Trainers of any amateur, semiprofessional, or professional athlete or athletic team.
- (C) Massage practiced at the athletic department of any institution maintained by public funds of the state or of any of its political subdivisions.
- (D) Massage practiced at the athletic department of any school or college.
- (E) Massage clinics operated as part of a certified class for the purpose of student training supervised by an approved instructor or preceptor if:
- (F) Any charge for the massage does not exceed the cost incurred in providing the massage; and
- (G) The student is not compensated.
- (H) Students enrolled in a certified class when practicing massage techniques in a nonclinical setting, at or away from massage school premises or program sites, under the supervision of an approved instructor or preceptor, if:
 - (1) The student is clearly identified as a student to any member of the public receiving massage services; and
 - (2) The student is not compensated.

- (I) Nonresident practitioners holding a valid license, permit, certificate or registration issued by any other state or territory of the United States or by a foreign country and temporarily practicing massage in this state for a period not exceeding 30 days for the purpose of:
 - (1) Presenting educational or clinical programs, lectures, seminars or workshops;
 - (2) Furnishing massage services during an emergency as part of a disaster response team; or
 - (3) Consulting with a massage therapist licensed in this state regarding massage practices or services.
- (J) Trained or licensed practitioners of psychotherapy or counseling modalities that use physical techniques to access or support psychotherapeutic processes when practicing within the scope of a license or if the practitioner has an express oral or written agreement that the sole intent in using the physical techniques is to render the psychotherapy or counseling.
- (K) Practitioners of reflexology who do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of reflexology through the application of pressure with the thumbs to reflex points on the feet, hands and ears for the purpose of bringing the body into balance, thereby promoting the well-being of clients.
- (L) Practitioners who:
 - (1) Do not claim expressly or implicitly to be massage therapists;
 - (2) Limit their work to one or more of the following practices:
 - (a) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement;
 - (b) Using minimal touch over specific points on the body to facilitate balance in the nervous system; or
 - (c) Using touch to affect the energy systems or channels of energy of the body;
 - (3) Are certified by a professional organization or credentialing agency that:
 - (a) Requires a minimum level of training, demonstration of competence and adherence to an approved scope of practice and ethical standards; and
 - (b) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and
 - (4) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

- (M) Offices, clinics, and other facilities at which health care professionals licensed or registered with any state provide massage services to the public in the ordinary course of their health care profession;
- (N) 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;
- (O) A place of business where a person offers to perform or performs massage for not more than 72 hours in any six-month period and the massage is part of a public or charity event;
- (P) A self-employed Licensed Massage Therapist operating out of their home or the client's home;
- (Q) A spa or resort operated on the premises of a hotel with at least one hundred (100) rooms for overnight guests; or
- (R) A place of business which employs individuals who do not claim expressly or implicitly to be massage therapists and provides:
 - (1) Practices using reflexology, auricular therapy, and meridian therapies that affect the reflexes of the body;
 - (2) Practices using touch, words, and directed movements to deepen a person's awareness of movement patterns in his or her body, such as the Feldenkrais method, the Trager approach, and body-mind centering;
 - (3) Practices using touch or healing touch to affect the human energy systems, such as reiki, shiatsu, and meridians;
 - (4) Structural integration practices such as Rolfing and Hellerwork; and
 - (5) The process of muscle activation techniques.

5.20.070 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

- (A) In addition to the grounds set forth in other portions of this chapter, a massage business license may be denied, suspended, or revoked if the applicant, or a managing agent, principal, or equity holder of the applicant:
 - (1) Has made a willful misrepresentation in applying for and obtaining a license, including falsely claiming that persons listed on the business license application are Licensed Massage Therapists;
 - (2) Has been previously denied a license under this part or has had a license issued under this part suspended or revoked;

- (3) Has had a massage business license/permit revoked or suspended in another jurisdiction;
 - (4) Applicant's operation of a massage business would be a threat to the public health or safety;
 - (5) Has violated any provision of this part or any other applicable law;
 - (6) Has failed within the required timeframe to remit payment to the City for any fees incurred pursuant to this Code;
 - (7) Has been convicted of operating without a license under this part or performing any act for which a license is required under this part; or
 - (8) Has violated any of the provisions of this General Licensing Code.
- (B) The suspension or revocation of a massage business license shall be subject to the provisions of Scappoose Municipal Code Chapter 5.04.090 and 5.04.100

5.20.080 UNLAWFUL ACTS

(A) It shall be unlawful for any person to:

- (1) Directly or indirectly, personally or through an agent or employee, conduct any massage business, or to use in connection with the massage business any premises, in whole or in part, without possessing a valid massage business license for each premises where the massage business operates.
- (2) Make a willful misrepresentation in applying for or obtaining a massage business license.
- (3) Flee, attempt to flee, or elude inspection pursuant to this part. Eluding may include, but isn't limited to, avoidance of inspections, refusing to allow entrance to the facility, or refusing to allow inspection of all of, or any portion of, the premises.

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

- (1) Employ any person as a massage therapist or allows any person to work as a massage therapist in a massage business who does not possess both a valid government-issued, photographic identity card and a valid Licensed Massage Therapist license for the jurisdictions (federal, state, local, etc.) where the massage business is located.
- (2) Encourage, permit, or tolerate any massage therapist to engage in specified sexual activities or to expose the massage therapist's specified anatomical areas within the premises while working with a massage client.
- (3) Fail to keep records as required by this part or fail to permit inspection of records as required by this part.

- (4) Fail to immediately report to law enforcement any specified sexual activities occurring in a massage business.
- (5) Permit the massage business premises to be used for living or sleeping quarters for any person when not otherwise permitted by the Scappoose Municipal Code.
- (C) It shall be unlawful for any massage business to advertise in ways that violate local, state, or federal laws and statutes.
- (D) Each principal, managing agent, and equity holder shall abide by all applicable local, state, and federal laws and statutes.

5.20.090 RECORDS AND INSPECTIONS

- (A) The managing agent and principals shall keep and maintain records for all employees and independent contractors of the massage business during the term of the person's employment and for at least three (3) years thereafter. These records shall, at a minimum, contain the following: name, age, current address and telephone numbers, description of the duties and responsibilities of the person, a copy of the valid government-issued photographic identity card of the person, and any other information reasonably required by the City Manager, or their designee. The records shall also include a copy of the massage therapist license held by any licensed massage therapist working on the premises.
- (B) The Police Department, the City Recorder, or the City Manager's designee may inspect each licensed massage business to determine compliance with the provisions of this part. Inspection of premises and records shall occur at any reasonable time during the hours of operation or during any period of apparent activity. Upon request, the licensed premises, including any places of storage, shall be open and made immediately available for inspection. Where any part of the licensed premises consists of a locked area, the area shall be unlocked and made available for inspection without delay upon request.

5.20.100 NOTICE OF UNLICENSED MASSAGE BUSINESS AND VIOLATION

- (A) Where the Police Department, the City Recorder, or the City Manager's designee determines that an unlicensed premises is being used to operate a massage business, in addition to any other notice provided for in Article 1 of this Chapter, notice of the requirements of this part may be provided to the owner and occupants of the premises by affixing a notice to the principal entrance of the unlicensed premises and by mailing notice to the license holder and associated interest holders as their addresses appear on the business license, and the property owner as their address appears on the tax records of the County Assessor.
- (B) Any person convicted of violating this Chapter shall be punished as provided in Scappoose Municipal Code Chapter 1.08, General Penalty.

Exhibit E

ORDINANCE NO. 910

AN ORDINANCE RELATING TO MASSAGE BUSINESSES, CREATING SCAPPOOSE MUNICIPAL CODE CHAPTER 5.20, MASSAGE FACILITIES

WHEREAS, The illicit massage industry is known as a large and well-networked human trafficking market; and
The Scappoose Police Department became aware of massage businesses in Scappoose being used for illicit purposes; and

WHEREAS, The Scappoose Police Department and the City of Scappoose are committed to the safety, health, and general welfare of all persons within the City of Scappoose; and

WHEREAS, The Scappoose Police Department, the City of Scappoose, and the Scappoose City Council find human trafficking to be a violation of the Constitution of the United States, the Constitution of the State of Oregon, and a violation of the laws of the United States and the State of Oregon; abhorrent, akin to slavery, and utterly against the morals of the community of Scappoose; and

WHEREAS, The Scappoose Police Department became aware of massage businesses in Scappoose engaged in illicit activities; and

WHEREAS, The Scappoose Police Department, the City of Scappoose, and the Scappoose City Council are committed to the safety, health, and general welfare of all persons within the City of Scappoose; and

WHEREAS, the City of Scappoose, ~~the and the~~ Scappoose Police Department, and the Scappoose City Council find it in the best interest of the public, and in the interest of the public's health, safety, and general welfare, to prevent prohibit businesses who engage in these types of illicit activities from obtaining a business license in the City of Scappoose.;

NOW THEREFORE, THE COUNCIL OF THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

- (1) Chapter 5 of the Scappoose Municipal Code is hereby amended as indicated in Exhibit A, attached hereto and hereby incorporated by reference.
- (2) If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.
- (3) This ordinance is effective 30 days after passage.

PASSED AND ADOPTED by the City Council this ____ day of _____, 20____, and signed by the Mayor and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON

Joseph A.e Backus, Mayor

First Reading:
Second Reading:

Attest: _____
Susan M. Reeves, MMC, City Recorder

Exhibit A

Chapter 5.20 **MASSAGE FACILITIES**

Sections:

- 5.20.010 Definitions
- 5.20.020 City of Scappoose Massage Business License Required
- 5.20.030 Application Requirements
- 5.20.040 Compliance Checks
- 5.20.050 Fees and Term
- 5.20.060 Exemptions
- 5.20.070 Denial, Suspension, or Revocation of License
- 5.20.080 Unlawful Acts
- 5.20.090 Records and Inspections
- 5.20.100 Notice of Unlicensed Massage Business and Violation

5.20.010 DEFINITIONS

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

~~(B)~~ “Equity holder” means any natural person who is a shareholder, partner, member, trustee, or other principal owner of the massage business, who owns ten percent (10%) or greater financial interest in the massage business, whether directly or through any number of holding entities, partnerships, or trusts.

~~(C)~~

~~(D)(B) “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.~~

~~(C) “Massage,” means the use of pressure, friction, stroking, tapping or kneading on the human body, or the use of vibration or stretching on the human body by manual or mechanical means or gymnastics, with or without appliances such as vibrators, infrared heat, sun lamps or external baths, and with or without lubricants such as salts, powders, liquids or creams, for~~

the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition.

~~(E)(D)~~ “Massage business”: means a facility where a person engages in the practice of massage
~~means a business that offers massage~~ in exchange for any form of consideration except as provided in section 5.20.050 of this Section.

~~(E)~~ “Licensed Massage Therapist” means a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991 to practice massage.

~~(F)~~ “Massage therapist” ~~means Any person who administers or offers to administer to another person, for any form of consideration or hire, a massage.~~

~~(G)~~

~~(H)(F)~~ “Specified anatomical areas” means less than completely and opaquely covered human genitals, pubic region, buttocks, and breast below a point above the top of the areola; and/or, human genitals in a discernible turgid state even if completely and opaquely covered.

~~(H)(G)~~ “Specified sexual activities” means acts, simulated acts, exhibitions, representations, depictions, or descriptions of any type of sexual activity. This includes: “sexually explicit conduct” as defined by the 2021 ORS 163.665 (3); “Sexual Contact” and “Sexual intercourse” as defined by the 2021 ORS 163.305; and “Sexual Conduct” and “Sexual Contact” as defined by the 2021 ORS 167.002.

5.20.020 CITY OF SCAPPOOSE MASSAGE BUSINESS LICENSE REQUIRED

(A) On or after the date of enactment of this Ordinance, it shall be unlawful for any person to operate a massage business without possessing a valid massage business license for each premises where the massage business operates. Business operating with a valid City of Scappoose Business License at the time of enactment will need to complete the Massage Business License Addendum when they renew their business license, but do not need to complete the addendum until their business license expires.

(B) Each massage business license shall specify the name under which the licensee is to operate, the address of the principal place of business, the expiration date and, ~~the~~ number of the driver's license, and any other information the City Manager, or their designee, deems necessary.

(C) The massage business shall display the massage business license in a conspicuous place readily visible to persons entering the licensed premises.

5.20.030 APPLICATION REQUIREMENTS

(A) In addition to the requirements set forth in Scappoose Municipal Code, Chapter 5.04, the application for a massage business license shall include all of the following:

- (1) The full name and any other names under which each equity holder of the applicant is or has been known and the residence address, telephone number, and date of birth of each equity holder of the applicant.
- (2) A description of the specific types of services to be rendered.
- (3) Documentary evidence that the officers, equity holders, and managers of the applicant are at least a minimum of eighteen (18) years old.
- ~~(4)~~ Documentary evidence that the applicant has or will have possession of the premises to be licensed during the term of the license by ownership, lease, rental, or other arrangement.
- ~~(4)(5)~~ Documentary evidence that any massage therapists working at or for the business giving massages are or will be appropriately licensed with the Oregon State Board of Massage Therapists.
- ~~(5)(6)~~ A detailed diagram showing the configuration of the premises to be licensed as follows:
 - (a) The diagram shall be no larger than eight and one-half inches by eleven inches (8 1/2" x 11");
 - (b) The diagram shall include the dimensions and total square footage of the premises to be licensed but does not need to be drawn to scale;
 - (c) The diagram shall designate the use of each room or other definitive area of the premises to be licensed;
 - (d) The diagram shall show the type of control of the exterior areas of the premises to be licensed, including, without limitation, fences, walls, and entry/exit points;
 - (e) If the premises to be licensed consists of multiple levels, a separate diagram shall be filed for each floor; and
 - (f) The premises to be licensed shall be outlined in bold.
 - ~~(g)~~ The City Manager, or their designee, may waive the site diagram for renewal applications if the applicant adopts a diagram that was previously submitted, certifies that the configuration of the premises has not been altered since it was prepared and that the use of any area or room in the premises has not changed.

5.20.040 Compliance Checks

- (A) Certain parties related to, or working for, the business, as outlined below, will need to submit to a background check and verification of standing with the Oregon State Board of Massage Therapists.
- (B) Individuals required to go through this process will need to submit a notarized background check form along with the application, allowing the Scappoose Police Department to conduct a criminal background check and verify their standing with the Oregon State Board of Massage Therapists, and pay the associated background check fee, which can be found on the City of Scappoose fee schedule. Background checks and verifications shall be conducted by Scappoose Police Department Staff. The Police Chief shall be the final decision maker on the passage or failure of the background check and license verification.
- (C) City Staff can notarize the background check authorization form for applicants at no charge. A determination about the necessity of employees submitting background checks will be made after the initial business license application is submitted to the City of Scappoose.
- (D) Individuals who need to submit to a background check and/or license verification with the Oregon Board of Massage Therapists:
- (1) Each applicant, principal, managing agent, and equity holder.
 - (2) Any partner, equity holder, manager, employee, or potential employee, who will or might be conducting massage will need to complete the background check form to allow the Scappoose Police Department to verify the status of their license with the Oregon State Board of Massage Therapists. There will be no fee associated with license verifications.
 - (3) Other employees not listed here may be required to submit to the background check, and/or the license verification, at the discretion of the Chief of Police or their designee. The reasoning shall be put in writing, transmitted to the applicant via writing and email, and the applicant shall have 15 days to submit the appropriate paperwork.
- (E) Exemptions from the background check requirement.
- (1) Licensed Massage Technicians who:
 - (a) Have successfully completed a background check to receive their LMT license within the last three years; and
 - (b) Who can substantiate that the background check occurred; and
 - (c) Successful passing of that background check can be substantiated by the Scappoose Police Department,

Do not need to submit to the initial background check or the associated fees but will need to submit to verification of their license as described above.

- (F) Once an initial background check has been completed, applicants, principals, managing agents, equity holders, Licensed Massage Therapists, and potentially, employees, are not subject to Business License Application background checks required in this section for three (3) years.
- (G) New applicants, principals, managing agents, equity holders, Licensed Massage Therapists, and potentially, employees, are subject to background checks under this Section when Business License Renewals are submitted to the City of Scappoose. Failure to disclose new applicants, principals, managing agents, equity holders, and potentially, employees, may be a violation as defined in 5.20.090(b) and subject to associated penalties.
- (H) Each applicant's, principal's, managing agents', and equity holders' criminal history, any conviction or guilty plea to a charge based upon acts ~~that bear a demonstrable relationship to the practice of massage or operation of a massage facility will be considered during the business licensing process.~~ Acts related to ~~of dishonesty, fraud, deceit,~~ violence, weapons, substance abuse or narcotics, sexual misconduct or prostitution related misconduct of any kind, ~~and human trafficking,~~ regardless of the jurisdiction in which the act was committed, may be considered in a decision to grant, renew, revoke, or suspend the license.
- (I) Criteria and Mitigating Circumstances.
- (1) In making the determination of successful passing of a background check the Scappoose Police Department must consider:
- (a) The nature of any crimes;
 - (b) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
 - (c) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
 - (d) Any other pertinent information requested or obtained as a part of this background check process;
 - (e) The Police Department may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.
 - (f) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:

- I. The passage of time since the commission of the crime;
- II. The age of the subject individual at the time of the crime;
- III. The likelihood of a repetition of offenses or of the commission of another crime;
- IV. The subsequent commission of another relevant crime;
- V. Whether the conviction was set aside and the legal effect of setting aside the conviction; and
- VI. A recommendation of an employer.

Each applicant, principal, managing agent, and equity holder—and potentially employees, at the discretion of the City Manager or their designee—will also need to submit a notarized background check form along with the application, allowing the Scappoose Police Department to conduct a criminal background check and verify their standing with the Oregon State Board of Massage Therapists, and pay the associated background check fee, which can be found on the City of Scappoose fee schedule. City Staff can notarize the background check authorization form. A determination about the necessity of employees submitting background checks will be made after the initial business license application is submitted to the City of Scappoose.

- ~~(6) Once an initial background check has been completed, applicants, principals, managing agents, equity holders, and potentially, employees, are not subject to Business License Application background checks required in this section for three (3) years.~~
 - ~~(7) New applicants, principals, managing agents, equity holders, and potentially, employees, are subject to background checks under this Section when Business License Renewals are submitted to the City of Scappoose. Failure to disclose new applicants, principals, managing agents, equity holders, and potentially, employees, may be a violation as defined in 5.20.090(b) and subject to associated penalties.~~
 - ~~(8) Background checks may be required more frequently than three years if there are reports of illicit activities relating to the business or persons named on the business license sought under this Section.~~
- (J) In the event the City Manager, the Chief of Police, or their designee, takes into consideration information concerning the applicant's, principal's, managing agent's, and equity holder's criminal history record, the City Manager, Chief of Police or their designee, shall also consider any information provided by the applicant or licensee regarding the criminal history record, including, but not limited to, evidence of mitigating factors,

rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license or renewal.

~~(A)(K) If an applicant or licensee is determined to not be fit for a massage business license, the applicant or licensee is entitled to a hearing in front of the Scappoose City Council as described in Scappoose Municipal Code Chapter 5.04.100. Challenges to the accuracy of completeness of information provided by outside agencies reporting information must be made with the outside agency.~~

5.20.050 FEES AND TERM

Fees shall be as established by City Council and shall be listed on the City of Scappoose fee schedule. Fees shall not be refundable for any reason.

5.20.060 EXEMPTIONS

The licensing requirements of this article do not apply to:

- ~~(A) Public and private schools accredited by the state board of education or approved by the state division of private occupational schools;~~
- ~~(B) Facilities providing massage services by employees of any governmental entity;~~
- ~~(C) Training rooms of a recognized professional or amateur sports organization, dance troupe, bona fide athletic club, or other such athletic organization. For purposes of this subsection, a bona fide athletic club is an athletic club that receives ten percent (10%) or less of its gross income from providing massages to its members or the public;~~
- (A) Persons licensed under any other law of this state to do any acts included in the definition of massage in ORS 687.011 or persons working under the direction of any such person.
- (B) Trainers of any amateur, semiprofessional, or professional athlete or athletic team.
- (C) Massage practiced at the athletic department of any institution maintained by public funds of the state or of any of its political subdivisions.
- (D) Massage practiced at the athletic department of any school or college.
- (E) Massage clinics operated as part of a certified class for the purpose of student training supervised by an approved instructor or preceptor if:
- (F) Any charge for the massage does not exceed the cost incurred in providing the massage; and
- (G) The student is not compensated.

(H) Students enrolled in a certified class when practicing massage techniques in a nonclinical setting, at or away from massage school premises or program sites, under the supervision of an approved instructor or preceptor, if:

(1) The student is clearly identified as a student to any member of the public receiving massage services; and

(2) The student is not compensated.

(I) Nonresident practitioners holding a valid license, permit, certificate or registration issued by any other state or territory of the United States or by a foreign country and temporarily practicing massage in this state for a period not exceeding 30 days for the purpose of:

(1) Presenting educational or clinical programs, lectures, seminars or workshops;

(2) Furnishing massage services during an emergency as part of a disaster response team; or

(3) Consulting with a massage therapist licensed in this state regarding massage practices or services.

(J) Trained or licensed practitioners of psychotherapy or counseling modalities that use physical techniques to access or support psychotherapeutic processes when practicing within the scope of a license or if the practitioner has an express oral or written agreement that the sole intent in using the physical techniques is to render the psychotherapy or counseling.

(K) Practitioners of reflexology who do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of reflexology through the application of pressure with the thumbs to reflex points on the feet, hands and ears for the purpose of bringing the body into balance, thereby promoting the well-being of clients.

(L) Practitioners who:

(1) Do not claim expressly or implicitly to be massage therapists;

(2) Limit their work to one or more of the following practices:

(a) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement;

(b) Using minimal touch over specific points on the body to facilitate balance in the nervous system; or

(c) Using touch to affect the energy systems or channels of energy of the body;

(3) Are certified by a professional organization or credentialing agency that:

(a) Requires a minimum level of training, demonstration of competence and adherence to an approved scope of practice and ethical standards; and

(b) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and

(4) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

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

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

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

~~(G)~~(P) A self-employed Licensed Massage Therapist operating out of ~~the massage therapist's~~their home or the client's home;

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

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

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

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

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

(4) Structural integration practices such as Rolfing and Hellerwork; and

~~(5)~~The process of muscle activation techniques.

(5)

5.20.070 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

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

(1) Has made a willful misrepresentation in applying for and obtaining a license, **including falsely claiming that persons listed on the business license application are Licensed Massage Therapists;**

~~(1)~~

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

(3) Has had a massage business license/permit revoked or suspended in another jurisdiction;

(4) Applicant's operation of a massage business would be a threat to the public health or safety;

(5) Has violated any provision of this part or any other applicable law;

(6) Has failed within the required timeframe to remit payment to the City for any fees incurred pursuant to this Code;

(7) Has been convicted of operating without a license under this part or performing any act for which a license is required under this part; or

(8) Has violated any of the provisions of this General Licensing Code.

(B) The suspension or revocation of a massage business license shall be subject to the provisions of Scappoose Municipal Code Chapter 5.04.090 and 5.04.100

5.20.080 UNLAWFUL ACTS

(A) It shall be unlawful for any person to:

(1) Directly or indirectly, personally or through an agent or employee, conduct any massage business, or to use in connection with the massage business any premises, in whole or in part, without possessing a valid massage business license for each premises where the massage business operates.

(2) Make a willful misrepresentation in applying for or obtaining a massage business license.

- (3) Flee, attempt to flee, or elude inspection pursuant to this part. Eluding may include, but isn't limited to, avoidance of inspections, refusing to allow entrance to the facility, or refusing to allow inspection of all of, or any portion of, the premises.
- (B) It shall be unlawful for any principal or managing agent of a massage business to:
- (1) Employ any person as a massage therapist or ~~to allow~~ any person to work as a massage therapist in a massage business who does not possess both a valid government-issued, photographic identity card and a valid Licensed Massage Therapist license for the jurisdictions (federal, state, local, etc.) where the massage business is located.
 - (2) Encourage, permit, or tolerate any massage therapist to engage in specified sexual activities or to expose the massage therapist's specified anatomical areas within the premises while working with a massage client.
 - (3) Fail to keep records as required by this part or fail to permit inspection of records as required by this part.
 - (4) Fail to immediately report to law enforcement any specified sexual activities occurring in a massage business.
 - (5) Permit the massage business premises to be used for living or sleeping quarters for any person when not otherwise permitted by the Scappoose Municipal Code.
- (C) It shall be unlawful for any massage business to advertise in ways that violate local, state, or federal laws and statutes.
- (D) Each principal, managing agent, and equity holder shall abide by all applicable local, state, and federal laws and statutes.

5.20.090 RECORDS AND INSPECTIONS

- (A) The managing agent and principals shall keep and maintain records for all employees and independent contractors of the massage business during the term of the person's employment and for at least three (3) years thereafter. These records shall, at a minimum, contain the following: name, age, current address and telephone numbers, description of the duties and responsibilities of the person, a copy of the valid government-issued photographic identity card of the person, and any other information reasonably required by the City Manager, or their designee. The records shall also include a copy of the massage therapist license held by any licensed massage therapist working on the premises.
- (B) The Police Department, the City Recorder, or the City Manager's designee may inspect each licensed massage business to determine compliance with the provisions of this part. Inspection of premises and records shall occur at any reasonable time during the hours of operation or during any period of apparent activity. Upon request, the licensed premises,

including any places of storage, shall be open and made immediately available for inspection. Where any part of the licensed premises consists of a locked area, the area shall be unlocked and made available for inspection without delay upon request.

5.20.100 NOTICE OF UNLICENSED MASSAGE BUSINESS AND VIOLATION

- (A) Where the Police Department, the City Recorder, or the City Manager's designee determines that an unlicensed premises is being used to operate a massage business, in addition to any other notice provided for in Article 1 of this Chapter, notice of the requirements of this part may be provided to the owner and occupants of the premises by affixing a notice to the principal entrance of the unlicensed premises and by mailing notice to the license holder and associated interest holders as their addresses appear on the business license, and the property owner as their address appears on the tax records of the County Assessor.
- (B) Any person convicted of violating this Chapter shall be punished as provided in Scappoose Municipal Code Chapter 1.08, General Penalty.

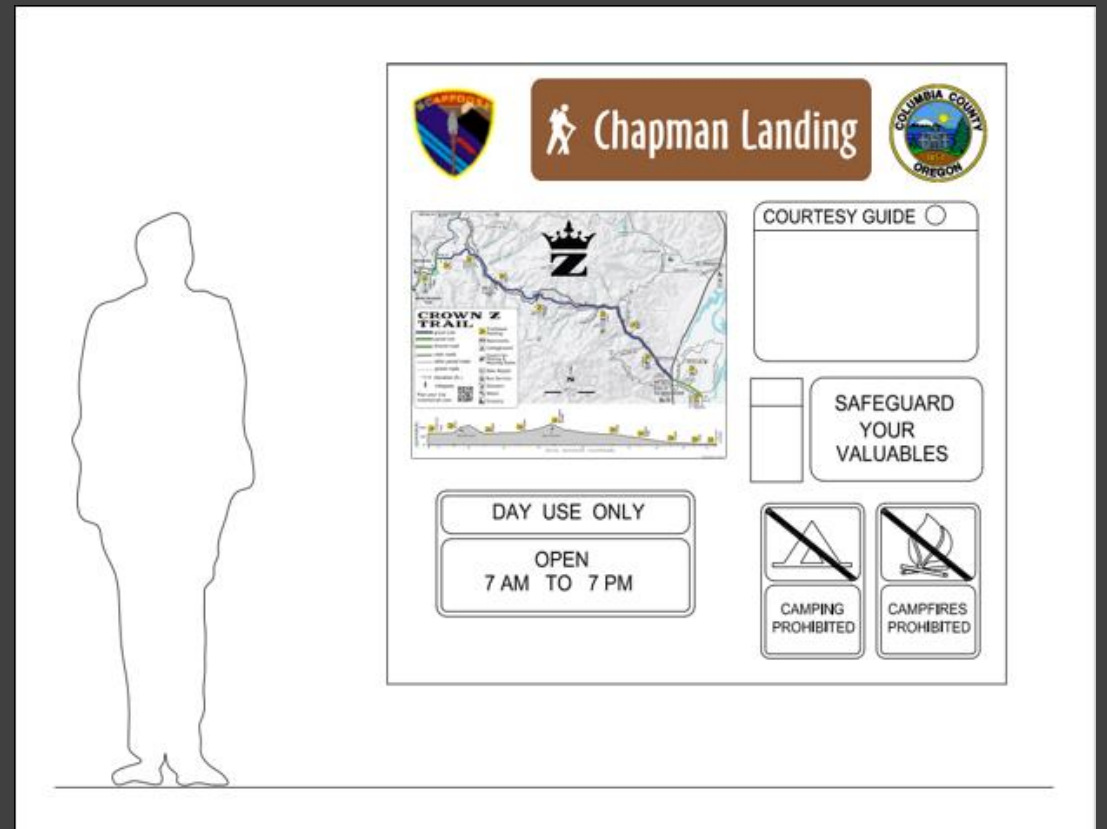
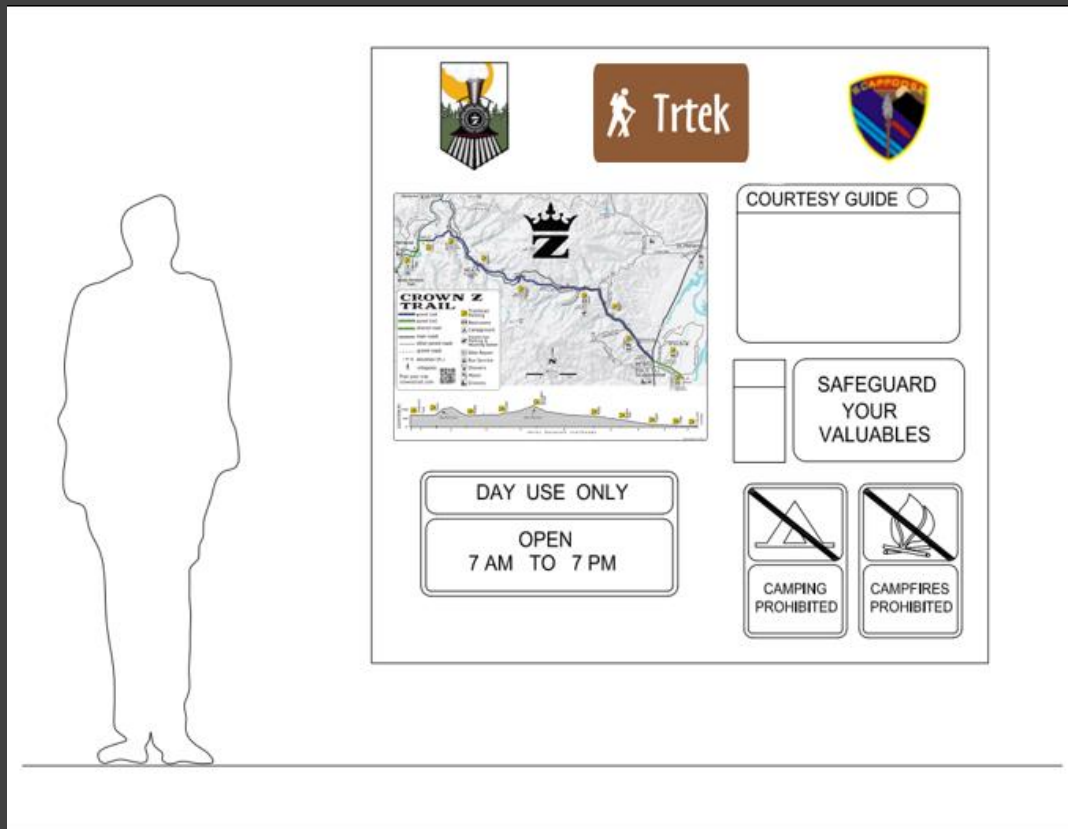
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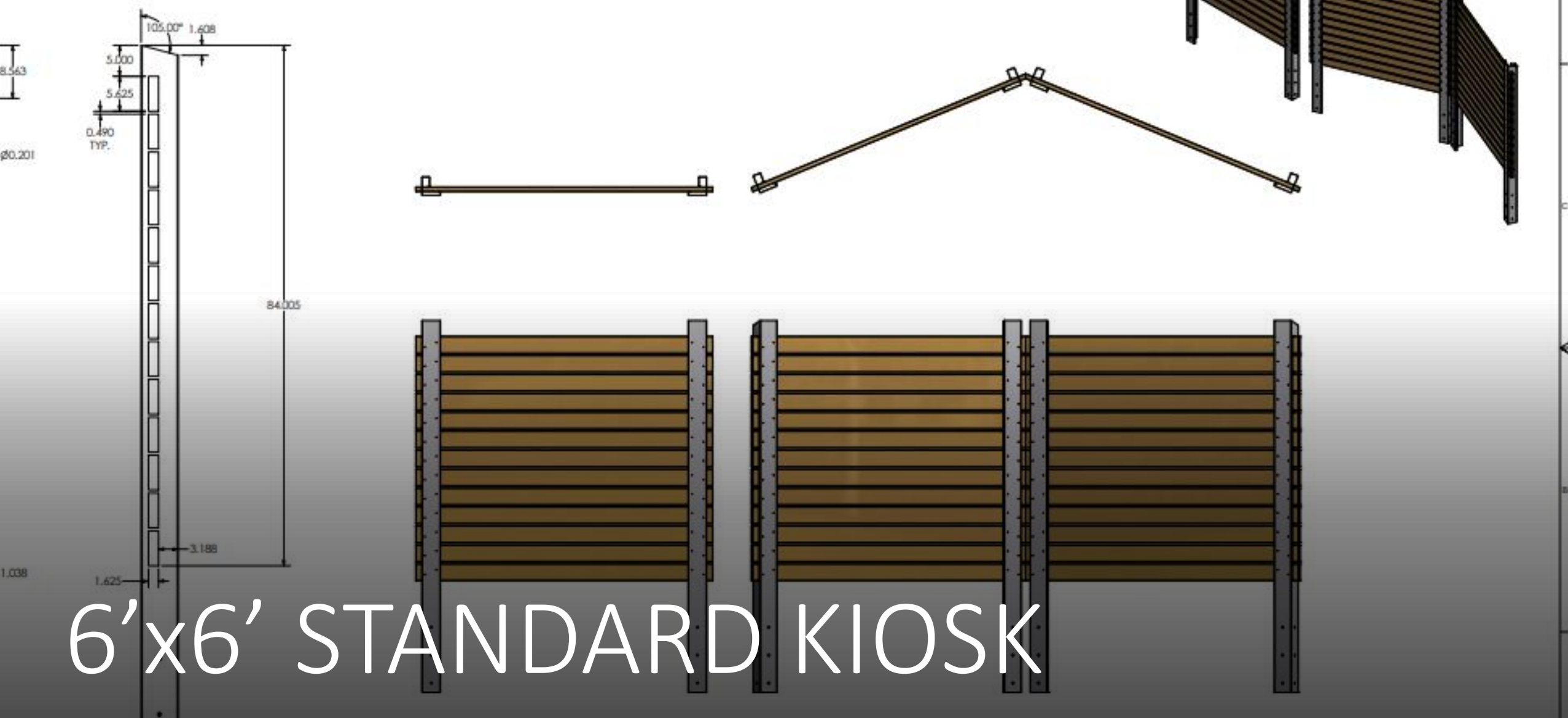


CROWN Z TRAIL

INTERPRETIVE SIGNS

TRAILHEAD KIOSKS

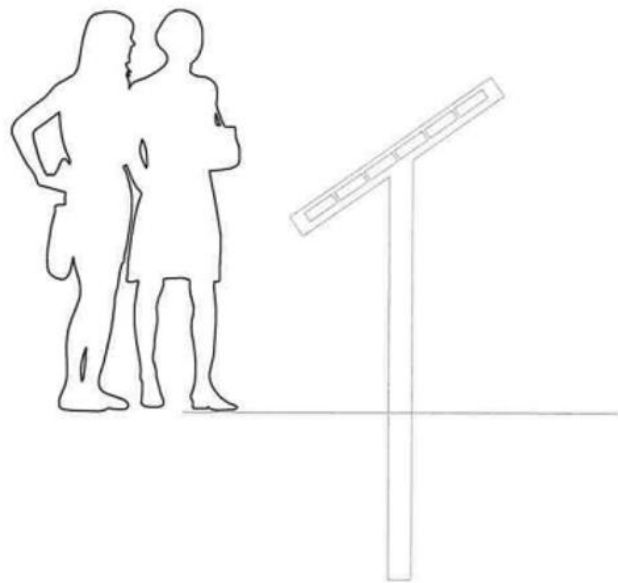




6'x6' STANDARD KIOSK

RIGHT SIDE SHOWN
LEFT SIDE IS MIRRORED

3'X3' ANGLED KIOSK



Kiosk Budget	6'x6' Standard				3'x3' Angled		
	Qty	Unit Price	TTL		Qty	Unit Price	TTL
PC steel posts w/slots	2	\$ 240.00	\$ 480.00		2	\$ 375.00	\$ 750.00
2x6x8 Cedar	12	\$ 24.00	\$ 288.00		3	\$ 24.00	\$ 72.00
12"x48" Sonotube	2	\$ 16.00	\$ 32.00		1	\$ 16.00	\$ 16.00
Readymix Concrete	14	\$ 5.00	\$ 70.00		7	\$ 5.00	\$ 35.00
Hardware	1	\$ 50.00	\$ 50.00		1	\$ 30.00	\$ 30.00
Signage	4	\$ 200.00	\$ 800.00		1	\$ 200.00	\$ 200.00
Labor Hrs	8	\$ 50.00	\$ 400.00		6	\$ 50.00	\$ 300.00
Equipment Hrs	3	\$ 85.00	\$ 255.00		2	\$ 85.00	\$ 170.00
	Total	\$	2,375.00		Total	\$	1,573.00

MATERIALS & LABOR COST ESTIMATE

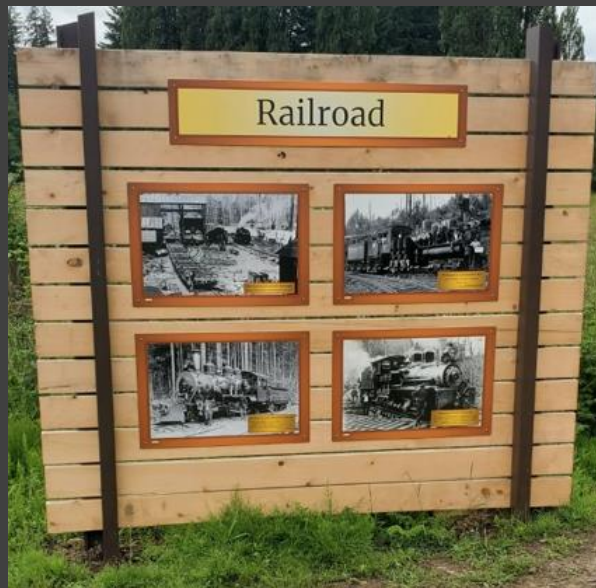


TRAIL PARTNERS AND SPONSORS	



- PRIVATE DONATIONS
- LOCAL SUPPLIER DISCOUNTS
- GRAPHIC DESIGN ASSISTANCE
- COUNTY ASSISTANCE WITH INSTALLATIONS
- CITY OF SCAPPOOSE FINANCIAL CONTRIBUTION





Local History

- Trtek Family
- Chapman Landing/Logging
- West Lane School
- Benjamin Watts
- Hudson Bay Company Horse Farm
- McKay Gravesite

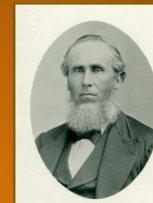


How the trains operated at the Chapman Landing log dump....

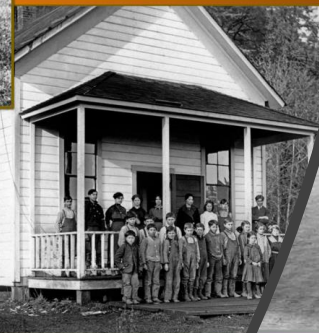
The main function of the train when it got to the dump was to cut the engine off and run it back, on the track to the south of the dump track, then switch back to the main line and go to the rear end of the train they brought in, and couple to the "disconnect" logging wheels at the rear of the train and as the logs were dumped, couple those little short 2-axle cars together and when all had been emptied, haul them back to Camp 1 or Camp 8 or wherever. The steam engine had to back up all the way to at least Camp 1 because there was no way to turn it around, at Scappoose or the dump.



Central Offices at the Chapman Logging Company River
(Center: Emma, below and above)



Benjamin Watts and his father William Watts were early settlers in Scappoose. Both had Donation Land Claims nearby.



WEST LANE SCHOOL

Near this location, Benjamin Watts donated one acre from his Donation Land Claim for the first public school in Columbia County. He taught classes until a teacher could be located.

WEST LANE ROAD

Named for William W. West, it led to his family home. In pioneer times, West Lane was used for horse races and other sports, for it was the only straight, level road in the whole area.

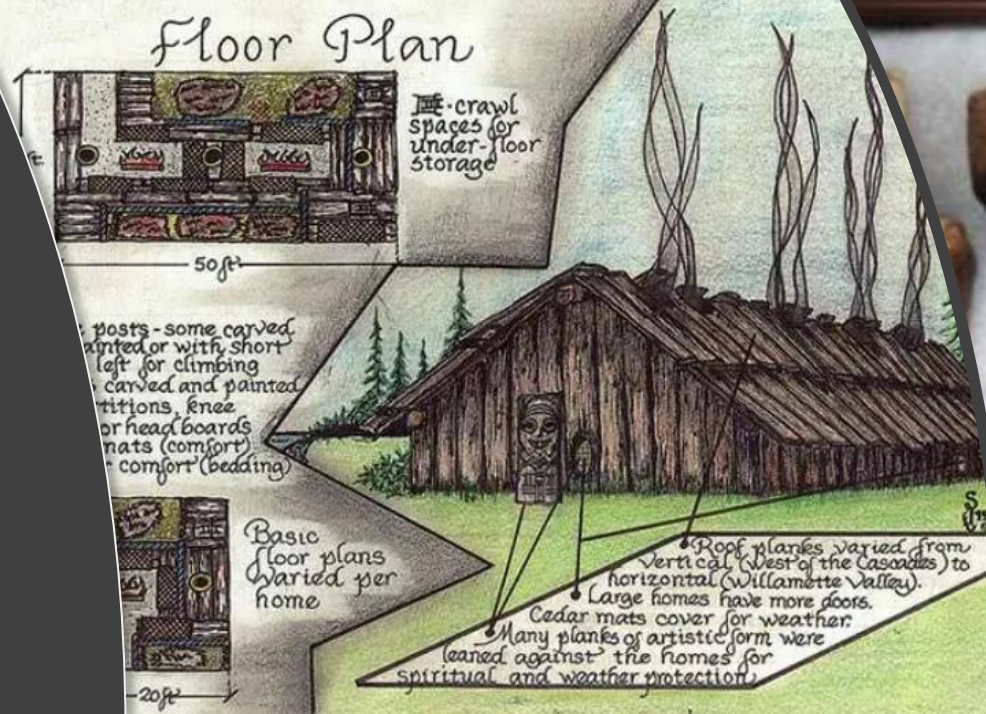


SCAPPOOSE
HISTORICAL
SOCIETY

Columbia County
Historical Society &
Museum
Association

Native History

- Meier and Ede Sites
- Plankhouses
- Chinook Artifacts



Wild Columbia County

Enjoying the outdoors in Columbia County, Oregon

- Riparian Areas
- Wetlands
- Native Species

Biodiversity in Abundance

Our lowland wetlands offer a diversity of wildlife unparalleled in the county. Some of the birds, mammals, frogs, turtles, snakes, and other creatures that frequent this marsh may be visible immediately, while others will only reveal themselves after careful observation. Take your time, examine every log and branch and hidden place in the reeds, and see who is here today!

Heron

Great Egret



Northern Shoveler



Ring-necked Ducks



American Bullfrog



Red-eared Slider Western Painted Turtles



Northwestern Garter Snake



Canada Geese



Cackling Geese



Mallard



Wilson's

Woodpecker



American Coots

The Riparian Thickets

Not all wetland-associated birds utilize the water. Many songbirds prefer wetland habitats due to the abundant insect life and protective dense vegetation found nearby. Several such species nest in these thickets, while others use them for a stopping point to rest, drink, and eat as they migrate.

Woodpeckers are also prevalent in riparian zones, due to the abundance of their insect food as well as the greater presence of standing snags in which they can both feed and nest.



Northern Flicker



Red-breasted Sapsucker



Bushtit



Song Sparrow



Golden-crowned Sparrow



White-crowned Sparrow



Yellow-rumped Warbler

Mammals of the Wetlands



American Beaver

Our largest rodent, 3.5 to 5 feet long and 25-60 pounds

Beaver Lodge



Muskrat Lodge



Nutria Burrow

Rodents have a unique impact in shaping our wetlands. Beavers create new ponds with their dams, then expand them by cutting down trees around the perimeter. These marsh/dam complexes collect sediment and debris, thus cleansing the water that flows downstream. Muskrats clear cattails and reeds, increasing the open-water area and helping control invasive vegetation. And all three species dig burrows in the mud, which can create habitat for other animals but may also lead to bank collapse.

Wetland Carnivores

Several mammalian carnivores frequent our marshes. River Otters feed almost exclusively in water, gliding above and below the surface. Mink are nocturnal hunters equally comfortable in land or water. Weasels will swim to cross water bodies but typically hunt on land, sniffing for shrews and rodents in the grass surrounding the marsh. Raccoons prefer to wade, using their dexterous "hands" to uncover fish, frogs, and crayfish in the shallows.



Muskrat

Significantly smaller, 1.5-2.5 feet long and 1-4 pounds



Nutria

Medium, 2.5-3.5 feet long and 10-20 pounds



River Otter



Long-tailed Weasel



American Mink



Common

Pacific Treefrog

A Marsh's Denizens

Wildlife are drawn to the wetlands for three reasons: food, water, and shelter. Keep that in mind as you search the marsh for animals. Where might they be hiding in the brush? Is there anyone hunting from a strategic perch? If you lived in this wetland, where would you feel secure?

Pewee



Pewee

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STAKEHOLDER WORKSHOP



PROJECT SCOPE



GATHER INFORMATION AND IMAGERY



IDENTIFY LOCATIONS FOR
INSTALLATIONS



SECURE FUNDING

National Partnerships

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Our programs provide a voice for cities to share what makes them unique while showcasing the impact businesses have on their community.

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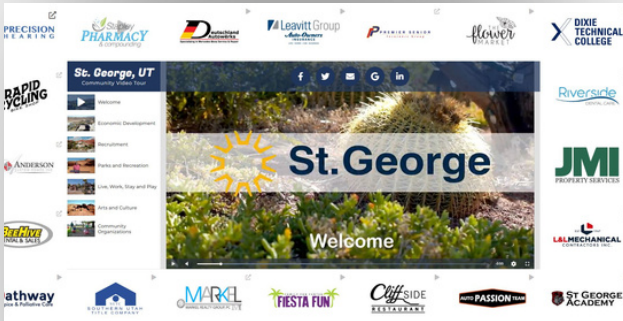
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**5,000+
community partnerships**

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clients in the U.S and
Canada**



CITY OF SCAPPOOSE

Council Action & Status Report

Date Submitted: January 31, 2023

Agenda Date Requested: February 6, 2023

To: Scappoose City Council

From: Isaac Butman, Assistant to City Manager;
Stephen Lougal, Chief of Police

Subject: Resolution 23-01; A Resolution establishing background check fees for the City of Scappoose Police Department

TYPE OF ACTION REQUESTED:

☒ **Resolution**

☐ **Ordinance**

☐ **Formal Action**

☐ **Report Only**

ISSUE: City Staff are in the process of bringing Ordinance 910 before City Council. Ordinance 910, **Exhibit A**, requires that a background check be done as part of the business license process for massage businesses. Running a background check takes staff time and resources. Staff is asking that Council impose a fee for cost recovery for conducting these background checks.

ANALYSIS: As part of its business license process for massage businesses, Police Department staff will be doing background checks to ensure that individuals applying for massage business licenses are not engaged in illicit activities. Massage facilities have long been a harbor for illicit activity, including human trafficking, prostitution, and other related crimes. City Council has approached this issue head on by working to institute a more robust review process for massage business licenses. Part of the change includes checking the criminal background of applicants.

Background checks take valuable staff time and resources to conduct properly. Each of these background checks will take around 30 minutes to: run through the background check system, analyze the results, and write a report on the findings.

Staff proposes that Council consider a cost recovery fee of \$30 for each background check to cover the staff time to fully complete the process, see **Exhibit B** for the Resolution. The Lieutenant position would be the employee most likely to be completing this process. The fully loaded hourly rate (salary plus benefits) for a Scappoose Police Lieutenant is \$72 to \$97 an hour. An assessment of \$30 is less than the estimated 30

minutes of time it will take to complete the process outlined in Ordinance 910.

The Oregon State Police charge \$33 for a criminal history check;
<https://www.oregon.gov/osp/programs/cjis/pages/cch.aspx>

The City of St. Helens charges \$20 for its public records requests,
https://www.sthelensoregon.gov/sites/default/files/fileattachments/building/page/2751/public_records_request-updated_121119_fillable.pdf

Columbia County does records checks on a page-rate basis, plus staff time:
https://www.co.columbia.or.us/files/counsel/public_records_fee_schedule_2014.pdf

The City of Scappoose charges public records requests at staff time:
https://www.ci.scappoose.or.us/sites/default/files/fileattachments/city_hall/page/2071/request_for_public_records_effective_july_2019.pdf

The Scappoose Police Department charges \$30 for Police Records:
https://www.ci.scappoose.or.us/sites/default/files/fileattachments/police/page/717/records_request_2019.pdf

The fee of \$30 will approach cost recovery for background checks done under Ordinance 910, and is consistent with current City of Scappoose practice, other law enforcement agencies practices, and the Oregon State Police fee for a criminal history check.

Staff feels that this is a reasonable fee because it will recover the costs related to the additional background check process and is consistent with other similar fees.

Fiscal Impacts: If Resolution 23-01 is not passed, the full cost of additional background checks will fall on the Scappoose Police Department. As this is a new Ordinance, there is not good data on the number of background checks that will need to be done.

A quick internet search shows around six businesses in Scappoose may fall under the new Ordinance. There could be as many as three background checks needed per business, which would amount to approximately \$540.00 every three years. It is impossible to know how many new business applications the City will receive for new massage businesses in the City. This could add up to a considerable sum, depending on the size of the business.

While the cost of a single business needing background checks is low, on the aggregate, over the lifetime of this ordinance, the cost will be quite high. This fee will only offset the cost to run the background checks for the massage business license process and will help ensure that the Scappoose Police Department can continue to provide its other services to the public at the same level that it currently does.

RECOMMENDATION: Staff recommends Council approve Resolution 23-01, a resolution establishing background check fees for the city of Scappoose police department.

SUGGESTED MOTION: I move Council adopt Resolution 23-01, a resolution establishing background check fees for the city of Scappoose police department, as written.

Exhibit A

ORDINANCE NO. 910

AN ORDINANCE RELATING TO MASSAGE BUSINESSES, CREATING SCAPPOOSE MUNICIPAL CODE CHAPTER 5.20, MASSAGE FACILITIES

WHEREAS, The illicit massage industry is known as a large and well-networked human trafficking market; and

WHEREAS, The Scappoose Police Department, the City of Scappoose, and the Scappoose City Council find human trafficking to be a violation of the Constitution of the United States, the Constitution of the State of Oregon, and a violation of the laws of the United States and the State of Oregon; abhorrent, akin to slavery, and utterly against the morals of the community of Scappoose; and

WHEREAS, The Scappoose Police Department became aware of massage businesses in Scappoose engaged in illicit activities; and

WHEREAS, The Scappoose Police Department, the City of Scappoose, and the Scappoose City Council are committed to the safety, health, and general welfare of all persons within the City of Scappoose; and

WHEREAS, the City of Scappoose, the Scappoose Police Department, and the Scappoose City Council find it in the best interest of the public, and in the interest of the public's health, safety, and general welfare, to prohibit businesses who engage in illicit activities from obtaining a business license in the City of Scappoose.

NOW THEREFORE, THE COUNCIL OF THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

- (1)** Chapter 5 of the Scappoose Municipal Code is hereby amended as indicated in Exhibit A, attached hereto and hereby incorporated by reference.
- (2)** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.
- (3)** This ordinance is effective 30 days after passage.

PASSED AND ADOPTED by the City Council this ____ day of _____, 20 ____, and signed by the Mayor and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON

Joseph A. Backus, Mayor

First Reading:
Second Reading:

Attest: _____
Susan M. Reeves, MMC, City Recorder

Exhibit A

Chapter 5.20 **MASSAGE FACILITIES**

Sections:

- 5.20.010 Definitions
- 5.20.020 City of Scappoose Massage Business License Required
- 5.20.030 Application Requirements
- 5.20.040 Compliance Checks
- 5.20.050 Fees and Term
- 5.20.060 Exemptions
- 5.20.070 Denial, Suspension, or Revocation of License
- 5.20.080 Unlawful Acts
- 5.20.090 Records and Inspections
- 5.20.100 Notice of Unlicensed Massage Business and Violation

5.20.010 DEFINITIONS

- (A) “Advertise” means to publish, display, or disseminate information and includes, but is not limited to, the issuance of any card, sign, or direct mail, or causing or permitting any sign or marking on or in any building or structure or in any newspaper, magazine, or directory, or any announcement or display via any televised, computerized, electronic, or telephonic networks or media, including advertising through internet sites, online bulletin boards or internet forums.
- (B) “Equity holder” means any natural person who is a shareholder, partner, member, trustee, or other principal owner of the massage business, who owns ten percent (10%) or greater financial interest in the massage business, whether directly or through any number of holding entities, partnerships, or trusts.
- (C) “Massage,” means the use of pressure, friction, stroking, tapping or kneading on the human body, or the use of vibration or stretching on the human body by manual or mechanical means or gymnastics, with or without appliances such as vibrators, infrared heat, sun lamps or external baths, and with or without lubricants such as salts, powders, liquids or creams, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition.
- (D) “Massage business”: means a facility where a person engages in the practice of massage in exchange for any form of consideration except as provided in section 5.20.050 of this Section.
- (E) “Licensed Massage Therapist” means a person licensed under ORS 687.011 to 687.250, 687.895 and 687.991 to practice massage.

- (F) “Specified anatomical areas” means less than completely and opaquely covered human genitals, pubic region, buttocks, and breast below a point above the top of the areola; and/or, human genitals in a discernible turgid state even if completely and opaquely covered.
- (G) “Specified sexual activities” means acts, simulated acts, exhibitions, representations, depictions, or descriptions of any type of sexual activity. This includes: “sexually explicit conduct” as defined by the 2021 ORS 163.665 (3); “Sexual Contact” and “Sexual intercourse” as defined by the 2021 ORS 163.305; and “Sexual Conduct” and “Sexual Contact” as defined by the 2021 ORS 167.002.

5.20.020 CITY OF SCAPPOOSE MESSAGE BUSINESS LICENSE REQUIRED

- (A) On or after the date of enactment of this Ordinance, it shall be unlawful for any person to operate a massage business without possessing a valid massage business license for each premises where the massage business operates. Business operating with a valid City of Scappoose Business License at the time of enactment will need to complete the Massage Business License Addendum when they renew their business license, but do not need to complete the addendum until their business license expires.
- (B) Each massage business license shall specify the name under which the licensee is to operate, the address of the principal place of business, the expiration date and number of the driver’s license, and any other information the City Manager, or their designee, deems necessary.
- (C) The massage business shall display the massage business license in a conspicuous place readily visible to persons entering the licensed premises.

5.20.030 APPLICATION REQUIREMENTS

- (A) In addition to the requirements set forth in Scappoose Municipal Code, Chapter 5.04, the application for a massage business license shall include all of the following:
 - (1) The full name and any other names under which each equity holder of the applicant is or has been known and the residence address, telephone number, and date of birth of each equity holder of the applicant.
 - (2) A description of the specific types of services to be rendered.
 - (3) Documentary evidence that the officers, equity holders, and managers of the applicant are at least a minimum of eighteen (18) years old.
 - (4) Documentary evidence that the applicant has or will have possession of the premises to be licensed during the term of the license by ownership, lease, rental, or other arrangement.

- (5) Documentary evidence that any massage therapists working at or for the business giving massages are or will be appropriately licensed with the Oregon State Board of Massage Therapists.
- (6) A detailed diagram showing the configuration of the premises to be licensed as follows:
 - (a) The diagram shall be no larger than eight and one-half inches by eleven inches (8 1/2" x 11");
 - (b) The diagram shall include the dimensions and total square footage of the premises to be licensed but does not need to be drawn to scale;
 - (c) The diagram shall designate the use of each room or other definitive area of the premises to be licensed;
 - (d) The diagram shall show the type of control of the exterior areas of the premises to be licensed, including, without limitation, fences, walls, and entry/exit points;
 - (e) If the premises to be licensed consists of multiple levels, a separate diagram shall be filed for each floor; and
 - (f) The premises to be licensed shall be outlined in bold.
 - (g) The City Manager, or their designee, may waive the site diagram for renewal applications if the applicant adopts a diagram that was previously submitted, certifies that the configuration of the premises has not been altered since it was prepared and that the use of any area or room in the premises has not changed.

5.20.040 Compliance Checks

- (A) Certain parties related to, or working for, the business, as outlined below, will need to submit to a background check and verification of standing with the Oregon State Board of Massage Therapists.
- (B) Individuals required to go through this process will need to submit a notarized background check form along with the application, allowing the Scappoose Police Department to conduct a criminal background check and verify their standing with the Oregon State Board of Massage Therapists, and pay the associated background check fee, which can be found on the City of Scappoose fee schedule. Background checks and verifications shall be conducted by Scappoose Police Department Staff. The Police Chief shall be the final decision maker on the passage or failure of the background check and license verification.
- (C) City Staff can notarize the background check authorization form for applicants at no charge. A determination about the necessity of employees submitting background checks will be made after the initial business license application is submitted to the City of Scappoose.

(D) Individuals who need to submit to a background check and/or license verification with the Oregon Board of Massage Therapists:

- (1) Each applicant, principal, managing agent, and equity holder.
- (2) Any partner, equity holder, manager, employee, or potential employee, who will or might be conducting massage will need to complete the background check form to allow the Scappoose Police Department to verify the status of their license with the Oregon State Board of Massage Therapists. There will be no fee associated with license verifications.
- (3) Other employees not listed here may be required to submit to the background check, and/or the license verification, at the discretion of the Chief of Police or their designee. The reasoning shall be put in writing, transmitted to the applicant via writing and email, and the applicant shall have 15 days to submit the appropriate paperwork.

(E) Exemptions from the background check requirement.

(1) Licensed Massage Technicians who:

- (a) Have successfully completed a background check to receive their LMT license within the last three years; and
- (b) Who can substantiate that the background check occurred; and
- (c) Successful passing of that background check can be substantiated by the Scappoose Police Department,

Do not need to submit to the initial background check or the associated fees but will need to submit to verification of their license as described above.

(F) Once an initial background check has been completed, applicants, principals, managing agents, equity holders, Licensed Massage Therapists, and potentially, employees, are not subject to Business License Application background checks required in this section for three (3) years.

(G) New applicants, principals, managing agents, equity holders, Licensed Massage Therapists, and potentially, employees, are subject to background checks under this Section when Business License Renewals are submitted to the City of Scappoose. Failure to disclose new applicants, principals, managing agents, equity holders, and potentially, employees, may be a violation as defined in 5.20.090(b) and subject to associated penalties.

(H) Criminal history, any conviction or guilty plea to a charge based upon acts that bear a demonstrable relationship to the practice of massage or operation of a massage facility will be considered during the business licensing process. Acts related to violence, weapons, substance abuse or narcotics, sexual misconduct or prostitution related misconduct of any

kind, and human trafficking, regardless of the jurisdiction in which the act was committed, may be considered in a decision to grant, renew, revoke, or suspend the license.

(I) Criteria and Mitigating Circumstances.

(1) In making the determination of successful passing of a background check the Scappoose Police Department must consider:

- (a) The nature of any crimes;
- (b) The facts that support the conviction or pending indictment or that indicates the making of any false statement;
- (c) The relevancy, if any, of the crime or the false statement to the specific requirements of applicant's or licensee's present or proposed license, services, employment, position, or permit;
- (d) Any other pertinent information requested or obtained as a part of this background check process;
- (e) The Police Department may also consider any arrests, court records, Department of Motor Vehicle records, or other information that may be indicative of a person's inability to perform as a licensee with care and safety to the public.
- (f) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, or permit. Intervening circumstances include but are not limited to:
 - I. The passage of time since the commission of the crime;
 - II. The age of the subject individual at the time of the crime;
 - III. The likelihood of a repetition of offenses or of the commission of another crime;
 - IV. The subsequent commission of another relevant crime;
 - V. Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - VI. A recommendation of an employer.

(J) In the event the Chief of Police, or their designee, takes into consideration information concerning the applicant's, principal's, managing agent's, and equity holder's criminal history record, the Chief of Police or their designee, shall also consider any information provided by the applicant or licensee regarding the criminal history record, including, but not limited to, evidence of mitigating factors, rehabilitation, character references, and

educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license or renewal.

- (K) If an applicant or licensee is determined to not be fit for a massage business license, the applicant or licensee is entitled to a hearing in front of the Scappoose City Council as described in Scappoose Municipal Code Chapter 5.04.100. Challenges to the accuracy of completeness of information provided by outside agencies reporting information must be made with the outside agency.

5.20.050 FEES AND TERM

Fees shall be as established by City Council and shall be listed on the City of Scappoose fee schedule. Fees shall not be refundable for any reason.

5.20.060 EXEMPTIONS

The licensing requirements of this article do not apply to:

- (A) Persons licensed under any other law of this state to do any acts included in the definition of massage in ORS 687.011 or persons working under the direction of any such person.
- (B) Trainers of any amateur, semiprofessional, or professional athlete or athletic team.
- (C) Massage practiced at the athletic department of any institution maintained by public funds of the state or of any of its political subdivisions.
- (D) Massage practiced at the athletic department of any school or college.
- (E) Massage clinics operated as part of a certified class for the purpose of student training supervised by an approved instructor or preceptor if:
- (F) Any charge for the massage does not exceed the cost incurred in providing the massage; and
- (G) The student is not compensated.
- (H) Students enrolled in a certified class when practicing massage techniques in a nonclinical setting, at or away from massage school premises or program sites, under the supervision of an approved instructor or preceptor, if:
 - (1) The student is clearly identified as a student to any member of the public receiving massage services; and
 - (2) The student is not compensated.

- (I) Nonresident practitioners holding a valid license, permit, certificate or registration issued by any other state or territory of the United States or by a foreign country and temporarily practicing massage in this state for a period not exceeding 30 days for the purpose of:
 - (1) Presenting educational or clinical programs, lectures, seminars or workshops;
 - (2) Furnishing massage services during an emergency as part of a disaster response team; or
 - (3) Consulting with a massage therapist licensed in this state regarding massage practices or services.
- (J) Trained or licensed practitioners of psychotherapy or counseling modalities that use physical techniques to access or support psychotherapeutic processes when practicing within the scope of a license or if the practitioner has an express oral or written agreement that the sole intent in using the physical techniques is to render the psychotherapy or counseling.
- (K) Practitioners of reflexology who do not claim expressly or implicitly to be massage therapists and who limit their work to the practice of reflexology through the application of pressure with the thumbs to reflex points on the feet, hands and ears for the purpose of bringing the body into balance, thereby promoting the well-being of clients.
- (L) Practitioners who:
 - (1) Do not claim expressly or implicitly to be massage therapists;
 - (2) Limit their work to one or more of the following practices:
 - (a) Using touch, words and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement;
 - (b) Using minimal touch over specific points on the body to facilitate balance in the nervous system; or
 - (c) Using touch to affect the energy systems or channels of energy of the body;
 - (3) Are certified by a professional organization or credentialing agency that:
 - (a) Requires a minimum level of training, demonstration of competence and adherence to an approved scope of practice and ethical standards; and
 - (b) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and
 - (4) Provide contact information in the practitioner's place of business for any organization or agency that has certified the practitioner.

- (M) Offices, clinics, and other facilities at which health care professionals licensed or registered with any state provide massage services to the public in the ordinary course of their health care profession;
- (N) 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;
- (O) A place of business where a person offers to perform or performs massage for not more than 72 hours in any six-month period and the massage is part of a public or charity event;
- (P) A self-employed Licensed Massage Therapist operating out of their home or the client's home;
- (Q) A spa or resort operated on the premises of a hotel with at least one hundred (100) rooms for overnight guests; or
- (R) A place of business which employs individuals who do not claim expressly or implicitly to be massage therapists and provides:
 - (1) Practices using reflexology, auricular therapy, and meridian therapies that affect the reflexes of the body;
 - (2) Practices using touch, words, and directed movements to deepen a person's awareness of movement patterns in his or her body, such as the Feldenkrais method, the Trager approach, and body-mind centering;
 - (3) Practices using touch or healing touch to affect the human energy systems, such as reiki, shiatsu, and meridians;
 - (4) Structural integration practices such as Rolfing and Hellerwork; and
 - (5) The process of muscle activation techniques.

5.20.070 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

- (A) In addition to the grounds set forth in other portions of this chapter, a massage business license may be denied, suspended, or revoked if the applicant, or a managing agent, principal, or equity holder of the applicant:
 - (1) Has made a willful misrepresentation in applying for and obtaining a license, including falsely claiming that persons listed on the business license application are Licensed Massage Therapists;
 - (2) Has been previously denied a license under this part or has had a license issued under this part suspended or revoked;

- (3) Has had a massage business license/permit revoked or suspended in another jurisdiction;
 - (4) Applicant's operation of a massage business would be a threat to the public health or safety;
 - (5) Has violated any provision of this part or any other applicable law;
 - (6) Has failed within the required timeframe to remit payment to the City for any fees incurred pursuant to this Code;
 - (7) Has been convicted of operating without a license under this part or performing any act for which a license is required under this part; or
 - (8) Has violated any of the provisions of this General Licensing Code.
- (B) The suspension or revocation of a massage business license shall be subject to the provisions of Scappoose Municipal Code Chapter 5.04.090 and 5.04.100

5.20.080 UNLAWFUL ACTS

(A) It shall be unlawful for any person to:

- (1) Directly or indirectly, personally or through an agent or employee, conduct any massage business, or to use in connection with the massage business any premises, in whole or in part, without possessing a valid massage business license for each premises where the massage business operates.
- (2) Make a willful misrepresentation in applying for or obtaining a massage business license.
- (3) Flee, attempt to flee, or elude inspection pursuant to this part. Eluding may include, but isn't limited to, avoidance of inspections, refusing to allow entrance to the facility, or refusing to allow inspection of all of, or any portion of, the premises.

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

- (1) Employ any person as a massage therapist or allows any person to work as a massage therapist in a massage business who does not possess both a valid government-issued, photographic identity card and a valid Licensed Massage Therapist license for the jurisdictions (federal, state, local, etc.) where the massage business is located.
- (2) Encourage, permit, or tolerate any massage therapist to engage in specified sexual activities or to expose the massage therapist's specified anatomical areas within the premises while working with a massage client.
- (3) Fail to keep records as required by this part or fail to permit inspection of records as required by this part.

- (4) Fail to immediately report to law enforcement any specified sexual activities occurring in a massage business.
- (5) Permit the massage business premises to be used for living or sleeping quarters for any person when not otherwise permitted by the Scappoose Municipal Code.
- (C) It shall be unlawful for any massage business to advertise in ways that violate local, state, or federal laws and statutes.
- (D) Each principal, managing agent, and equity holder shall abide by all applicable local, state, and federal laws and statutes.

5.20.090 RECORDS AND INSPECTIONS

- (A) The managing agent and principals shall keep and maintain records for all employees and independent contractors of the massage business during the term of the person's employment and for at least three (3) years thereafter. These records shall, at a minimum, contain the following: name, age, current address and telephone numbers, description of the duties and responsibilities of the person, a copy of the valid government-issued photographic identity card of the person, and any other information reasonably required by the City Manager, or their designee. The records shall also include a copy of the massage therapist license held by any licensed massage therapist working on the premises.
- (B) The Police Department, the City Recorder, or the City Manager's designee may inspect each licensed massage business to determine compliance with the provisions of this part. Inspection of premises and records shall occur at any reasonable time during the hours of operation or during any period of apparent activity. Upon request, the licensed premises, including any places of storage, shall be open and made immediately available for inspection. Where any part of the licensed premises consists of a locked area, the area shall be unlocked and made available for inspection without delay upon request.

5.20.100 NOTICE OF UNLICENSED MASSAGE BUSINESS AND VIOLATION

- (A) Where the Police Department, the City Recorder, or the City Manager's designee determines that an unlicensed premises is being used to operate a massage business, in addition to any other notice provided for in Article 1 of this Chapter, notice of the requirements of this part may be provided to the owner and occupants of the premises by affixing a notice to the principal entrance of the unlicensed premises and by mailing notice to the license holder and associated interest holders as their addresses appear on the business license, and the property owner as their address appears on the tax records of the County Assessor.
- (B) Any person convicted of violating this Chapter shall be punished as provided in Scappoose Municipal Code Chapter 1.08, General Penalty.

Exhibit B
Resolution 23-01

**A RESOLUTION ESTABLISHING BACKGROUND CHECK FEES
FOR THE CITY OF SCAPPOOSE**

WHEREAS, the City of Scappoose Charter authorizes the City Council to set and amend fees, which is done by resolution; and

WHEREAS, the City of Scappoose is in the process of adopting a new chapter of the Scappoose Municipal Code, Chapter 5.20 – Massage Facilities, which includes a background check conducted by the Scappoose Police Department; and

WHEREAS, the City Council desires to recover actual costs to process background checks, and the fees set forth in Section 1 below reflect those estimated actual costs;

NOW, THEREFORE BE IT RESOLVED,

Section 1: The following fees are hereby established for background checks completed by the City of Scappoose Police Department:

A. Background Check Fee (to be collected when background check waiver is submitted):

1. Police Department Processing Fee: \$30

Section 2: This resolution shall be effective immediately upon passage.

PASSED AND ADOPTED by the City Council this ____ day of ____, 20__ and signed by the Mayor and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON

Joseph A. Backus, Mayor

Attest: _____
Susan M Reeves, MMC, City Recorder

February 2023						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4 City Council Retreat
5	6 URA 6pm Council meeting 7pm	7	8	9	10	11 Historical Society Valentine's Day event, 6pm www.scappoosehistoricalsociety.org
12	13	14	15	16 EDC, noon Park & Rec, 6pm	17	18
19	20 City Offices Closed	21 Council work session 6pm Council meeting 7pm	22	23 Planning Commission 7pm	24	25
26	27	28				