

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 15th day of February, 2023, and signed by the Mayor and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON



Joseph A. Backus, Mayor

First Reading: February 6, 2023

Second Reading: February 15, 2023

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

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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 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 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 Therapists who:

- (a) Have successfully completed a background check to receive their LMT license or a license renewal 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 a 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:
- (1) Any charge for the massage does not exceed the cost incurred in providing the massage; and
 - (2) The student is not compensated.
- (F) 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.

- (G) 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.
- (H) 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.
- (I) 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.
- (J) 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.

- (K) 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;
- (L) 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;
- (M) 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;
- (N) A self-employed Licensed Massage Therapist operating out of their home or the client's home;
- (O) A spa or resort operated on the premises of a hotel with at least one hundred (100) rooms for overnight guests; or
- (P) 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.