

ORDINANCE NO. 2490  
INTRODUCED BY: Padilla

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, TO UPDATE THE SALES TAX AND LICENSING SECTION OF THE MUNICIPAL CODE, ADD A SECTION REGARDING LICENSING OF MASSAGE FACILITIES, AND SIMPLIFY LICENSING FOR KENNEL FACILITIES

WHEREAS, the City of Brighton ("City") is a home rule municipality with all authority granted by the State Constitution Article XX and the City Charter; and

WHEREAS, the City collects sales tax on the sale of tangible property or services provided by every retailer operating within the City, whether or not the retailer has a physical presence; and

WHEREAS, the City finds that updates to the sales tax and business licensing municipal code sections are necessary to provide clarity, remove redundancies, and allow more flexibility to better serve the business community; and

WHEREAS, the State Legislature passed House Bill 24-1371 regarding massage facilities and requiring local government to conduct fingerprint based criminal background checks for massage facility operators, owners, and employees; and

WHEREAS, the City desires to set out the licensing requirements for massage facilities within the City; and

WHEREAS, the operation of illicit massage facilities and sex trafficking present safety and welfare concerns for the residents of the City and in order to work against such criminal activity, the following changes are made to the municipal code to require criminal background checks; and

WHEREAS, the municipal code requirements for a kennel license can be simplified to reflect current practice and accept the State Department of Agriculture Pet Animal Care and Facilities Act License; and

WHEREAS, the City Council finds the following municipal code updates promote the health, safety, and welfare of the residents and visitors to the City.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:

Section 1. The following Article 5-32 shall be enacted and added to the municipal code as follows:

## Article 5-32 Massage Facility License

### Sec. 5-32-10 Definitions

Except as otherwise indicated by context, the following words, terms, and phrases shall have the following meanings for purposes of this Article:

- (a) "Advertise" or "advertisement" 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 to be placed 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.
- (b) "Agent" means an individual designated by a massage facility to act on behalf of the massage facility under this Article.
- (c) "Applicant" means a person who has submitted a request to the Licensing Authority for a Background Check, an initial license, or renewal of a license to operate a massage facility.
- (d) "Background Check" means a fingerprint-based criminal history record check, conducted in accordance with C.R.S. § 24-33.5-424.5, as may be amended, and also includes, to the extent allowed or required, as applicable, when a fingerprint-based criminal history record check cannot be completed or reveals a record of arrest without disposition, a criminal history record check using the Colorado Bureau of Investigation's records and a name-based judicial records check, as defined in C.R.S. § 22-2-119.3(6)(d), as may be amended.
- (e) "Client" means an individual who enters into an agreement for massage therapy for a fee, income, or compensation of any kind.
- (f) "Control" means the power to direct or cause the direction of the management and policies of an applicant, licensee, controlling person, manager, agent, or employee, in any way.
- (g) "Controlling Person" means a person directly or indirectly possessing control of an applicant or licensee.
- (h) "City" means City of Brighton in Adams County, State of Colorado.
- (i) "Employee" means
  - 1) an individual who is employed by a massage facility; or

2) an independent contractor who is hired by a massage facility to perform work that is part of the routine operations of the massage facility;

3) provided, however, that, for the purpose of determining who is required to submit to a Background Check under this Article, "employee" does not include:

- (i) a licensed massage therapist; or
- (ii) an independent contractor who performs janitorial services or other routine facility maintenance services for a massage facility and has no contact with or only incidental contact with clients of the massage facility.

(j) "Erotic parlor" means a facility that entices clients through advertising or other business practices directed towards sexual desire, lust, or passion.

(k) "Fully clothed" means fully opaque, nontransparent material that must not expose an employee's genitalia or substantially expose the employee's undergarments.

(l) "Hearing Officer" means an independent hearing officer designated by the City.

(m) "Home business" means a business, profession, occupation, or trade that is conducted within a residential dwelling unit for the economic gain or support of a resident of the dwelling and is incidental and secondary to the residential use of the lot, and that does not adversely or perceptively affect the character of the lot or surrounding area.

(n) "Illicit massage business" means a business that may provide massage but engages in human trafficking-related offenses, as described in C.R.S. §§ 18-3-503 and 18-3-504, as may be amended.

(o) "Licensing Authority" is the City of Brighton, and those designated to receive, review, and approve or deny, applications for licensure of a massage facility and related Background Checks; investigate and determine the eligibility of a person to be an owner or employee of a massage facility; and to otherwise administer and enforce this Article as set forth herein.

(p) "Manager" means an individual authorized by the licensee to exercise overall operational control of the business, to supervise employees, or to fulfill any of the functions required of a licensee or massage facility by this Article.

- (q) "Massage" or "massage therapy" 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 of human hands. This term "massage" or "massage therapy" is intended to have the same meaning as defined in C.R.S. § 12-235-104(4), as may be amended.
- (r) "Massage facility" means any place of business where massage therapy or full-body- massage is practiced or administered. The term "massage facility" shall not include those activities set forth in Section 5-32-50, Exemptions.
- (s) "Massage therapist" means an individual that has fulfilled the requirements for State licensure under C.R.S. § 12-235-108, as may be amended, and has a valid massage therapist license issued by the State of Colorado to engage in the practice of massage therapy. The terms "masseuse" and "masseur" are synonymous with the term "massage therapist."
- (t) "Mobile Massage Unit" means a vehicle or other movable enclosure specifically equipped for a massage therapist to provide massage therapy inside the vehicle or enclosure.
- (u) "Operator" means a person that is licensed by the City to operate a massage facility, or after a license is required to legally operate a massage facility, a person that is operating a massage facility without a license; except that, for the purpose of determining whether a person is required to submit to a Background Check, "operator" does not include a Massage Therapist.
- (v) "Owner" means a person other than an operator that holds a legal ownership interest in a massage facility; except that a person that is not involved in the operation of a massage facility and whose ownership interest consists only of stock in a publicly traded company that owns or operates a massage facility is not an owner.

- (w) "Person" means a natural person, partnership, association, company, corporation, or organization or managing agent, servant, officer, partner, owner, operator, or employee of any of them.
- (x) "Sexual Act" means sexual contact, sexual intrusion, or sexual penetration as defined in C.R.S. § 18-3-401, as may be amended.
- (y) "Solo practitioner" means a licensed massage therapist, as defined in this Article, performing the practice of massage therapy independently.
- (z) "Table shower" means an apparatus for the bathing or massaging of a person on a table or in a tub.

#### Sec. 5-32-20 License Required

All massage facilities are required to be licensed by the City of Brighton and no license will issue if the application is not complete or if any of the required background checks would require denial. No property owner shall permit the use of their premises to be operated as a massage facility without a valid massage facility license issued by the City.

#### Sec. 5-32-30 License Application Requirements

Any business license application for a Massage Facility shall be accompanied by the following background checks.

- a) Operators, Owners and Employees of Massage Facilities shall submit to a Background Check as described in this Article before, as applicable:
  1. being granted a license to operate a massage facility;
  2. assuming an ownership interest in a massage facility that would make the prospective owner an owner; or
  3. commencing employment with a massage facility.
- b) Prospective Operators, Owners and Employees of Massage Facilities. No person shall become or remain an operator, owner, or employee of a massage facility in the City of Brighton without first submitting to a Background Check as described in this Article.
- c) Background Check Procedures.
  - 1) Complete and file a Background Check request.
  - 2) Submit to a fingerprint-based Criminal History Record Information (CHRI) check performed by a vendor authorized by the Colorado Bureau of

Investigation to perform fingerprint-based CHRI searches. The applicant must provide the vendor with the City of Brighton jurisdiction code, which may be obtained from the City's Finance Department.

- 3) Pay the costs associated with the fingerprint-based CHRI check.
- 4) Authorize the entity taking the applicant's fingerprints to submit the complete set of the applicant's fingerprints to the Colorado Bureau of Investigation for the purpose of conducting a fingerprint-based CHRI check.
- 5) Comply with the Colorado Bureau of Investigation and Federal Bureau of Investigation's requirements to conduct a fingerprint-based CHRI check.
- 6) Authorize the Finance Director or their designee to use the information resulting from the CHRI check to investigate and determine whether the applicant is qualified to hold a license or be an owner or employee pursuant to this Article.
- 7) When the results of a fingerprint-based CHRI check of the applicant performed pursuant to this Article reveal a record of arrest without a disposition, submit to a name-based judicial record check, as defined in C.R.S. § 22-2-119.3(6)(d), as may be amended.
- 8) Submit any information the applicant wants considered by the Finance Director or designee regarding the criminal history, including, but not limited to, evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially any mitigating factors pertaining to the period between the applicant's last criminal conviction and the consideration of the applicant's application for a license or renewal, ownership or prospective ownership of a massage facility, operation or prospective operation of a massage facility, or employment or prospective employment by a massage facility.
- 9) If an approved third-party takes the applicant's, owner's or prospective owner's, operator's or prospective operator's, or employee's or prospective employee's fingerprints, the fingerprints may be electronically captured using Colorado Bureau of Investigation-approved livescan equipment. Third-party vendors shall not keep the applicant's, owner's or prospective owner's, operator's or prospective operator's, or employee's or prospective employee's information for more than 30 days.
- 10) The Colorado Bureau of Investigation shall use the applicant's, owner's or prospective owner's, operator's or prospective operator's, or employee's or prospective employee's fingerprints to conduct a criminal history record check using the bureau's records. The Colorado Bureau of Investigation shall also forward the fingerprints to the Federal Bureau of Investigation for the purpose of conducting a national fingerprint-based criminal history record check. The Colorado Bureau of Investigation; the applicant, owner or prospective owner, operator or

prospective operator, or employee or prospective employee; the Licensing Authority; and the entity taking fingerprints shall comply with the Federal Bureau of Investigation's requirements to conduct a fingerprint-based criminal history record check.

- 11) The Colorado Bureau of Investigation shall return the results of its criminal history record check to the Licensing Authority, and the Licensing Authority is authorized to receive the results of the Federal Bureau of Investigation's criminal history record check.
- 12) The Licensing Authority shall use the information resulting from the criminal history record checks to investigate and determine whether an applicant is qualified to hold a license or be an owner, operator, or employee pursuant to this Article. The CHRI check and any information submitted shall be reviewed by the Finance Director or designee, and the applicant will be notified in writing of any incomplete information. An application will not be considered complete until the results of the CHRI check are received by the City.
- 13) Within 30 days of receipt of a complete Background Check application, if the Finance Director or designee determines that the applicant is qualified to hold a license or to be an owner or employee pursuant to C.R.S. § 30-15-401.4 and this Article, the applicant and any known current or prospective massage facility employer associated with the applicant will be notified that the applicant has submitted to the statutorily-required Background Check and is not prohibited under State law from employment by a massage facility or from being an operator or owner of a massage facility, as applicable.
- 14) Within 30 days of receipt of a Background Check request, if the Finance Director or designee determines that the applicant is not qualified to hold a license or to be an owner, operator, or employee pursuant to C.R.S. § 30-15-401.4 and this Article, the applicant and any known current or prospective massage facility employer associated with the applicant will be notified that the applicant has submitted to the statutorily-required Background Check and is prohibited under State law from employment by a massage facility or from being an operator or owner of a massage facility, as applicable.
- 15) An operator or owner that learns that a prospective employee or employee has been convicted of or entered a plea of nolo contendere that is accepted by the court for an offense listed in C.R.S. § 30-15-401.4(4)(a)(IV)(C), as may be amended, or is registered as a sex offender or is required by law to register as a sex offender, as described in C.R.S. § 16-22-103, as may be amended, may hire the prospective employee to work at a massage facility or continue to employ the employee at a massage facility if the operator or owner believes that employing the prospective employee or employee does not pose a threat to customers or employees of the massage facility.

- 16) The Finance Director or their designee shall maintain a list with the full name and contact information of all individuals who have completed a Background Check; the business name, address and telephone number of the massage facility with whom the individual who completed the Background Check is associated; the date the results of the CHRI check were received by the City; the determination of whether an individual is qualified to be an owner, operator, or employee pursuant to State law; and the date that the individual, and the owner or operator, if applicable, were notified of the determination. This list shall be made available to the police department upon request.
- 17) The Finance Director or their designee may report information to the Colorado Department of Regulatory Agencies regarding criminal activity involving a licensed massage therapist.

(d) Prohibitions.

- 1) An operator or owner is prohibited from employing as an employee a person who has not submitted to a required Background Check pursuant to this Article.
- 2) A person is prohibited from being an operator, owner, or employee of a massage facility if the person:
  - a) Has not submitted to a required Background Check pursuant to this Article II at least 30 days before assuming an ownership interest in a massage facility that would make the prospective owner an owner;
  - b) Has been convicted of or entered a plea of nolo contendere that is accepted by the court for a felony or misdemeanor for prostitution, as described in C.R.S. § 18-7-201, as may be amended; solicitation of a prostitute, as described in C.R.S. § 18-7-202, as may be amended; a human trafficking-related offense, as described in C.R.S. §§ 18-3-503 or 18-3-504, as may be amended; or money laundering, as described in C.R.S. § 18-5-309, as may be amended; or
  - c) Is registered as a sex offender or is required by law to register as a sex offender, as described in C.R.S. § 16-22-103, as may be amended.

Sec. 5-32-40 License Fees and Application

(a) An applicant for a massage facility license shall:

- 1) Complete and file an application prescribed by the Licensing Authority. Each application for a massage facility license shall contain, at a minimum, the following information:
  - (i) If the applicant is an individual, satisfactory proof that he or she is 18 years of age or older.

- (ii) If the applicant is a legal entity, satisfactory proof that each of the individual owners, operators, officers, directors, managers, partners, members, principal owners, employees, and/or anyone with a 10% or more financial interest of such entity are 18 years or older.
- (iii) Whether the applicant, or any of the other individuals required to be listed in the application pursuant to subsection (a)(1)(ii) of this Section, have been convicted of, or entered a plea of "nolo contendere" that is accepted by the court, for a felony or misdemeanor, in any federal, state, or municipal court in any of the United States jurisdictions or territories, for prostitution, solicitation of prostitution, any human trafficking related offense, fraud, theft, embezzlement, money laundering, or similar crimes. Failure to disclose any such criminal conviction may result in denial of the license application.
- (iv) Whether the applicant, or any of the other individuals required to be listed in the application pursuant to subsection (a)(1)(ii), is registered as a sex offender or is required by law to register as a sex offender, as described in C.R.S. § 16-22-103, as may be amended.
- (v) Whether the applicant, or any of the other individuals required to be listed in the application pursuant to subsection (a)(1)(ii), has a pending criminal action that involves or is related to any offense described in subsections (a)(1)(iii) or (iv) of this Section.
- (vi) Whether the applicant, or any of the other individuals required to be listed in the application pursuant to subsection (a)(1)(ii), has voluntarily surrendered any license to practice as a massage therapist or operate a massage facility as a result of, or while under, civil or criminal investigation, or had a previous license under this or any other similar massage facility law or regulation in another jurisdiction or territory of the United States, denied, suspended, or revoked, and if so, the name and location of the massage facility for which such license was surrendered, denied, suspended, or revoked, as well as the date of such surrender, denial, suspension, or revocation.
- (vii) Whether the applicant, or any of the other individuals required to be listed in the application pursuant to subsection (a)(1)(ii), has been an owner, operator, officer, director, manager, partner, member, controlling person, employee, and/or principal owner of any legal entity which currently operates or previously operated a massage facility or business meeting the definition of massage facility in this Ordinance and the name, dates of operation, and location of such business or businesses.
- (viii) Satisfactory proof of the applicant's ownership or right to possession of the premises wherein the massage facility will be operated. The applicant shall have a continuing obligation to

provide, where applicable, subsequent evidence of the right to possession of the premises.

- 2) Submit to a Background Check pursuant to this Article and cause all operators, owners, and employees to do the same.
- 3) The City shall set the licensing fee in the annual fee resolution.

#### Sec. 5-32-50 Exemptions from Definition of Massage Facility

- a) The following activities shall not constitute a "massage facility" as defined herein and are exempt from this Article while practiced in accordance with the laws of the State of Colorado:
  - 1) Training rooms in public and nonpublic institutions of higher education, as defined in C.R.S. § 23-3.1-102(5), as may be amended.
  - 2) Training rooms of recognized professional or amateur athletic teams.
  - 3) Offices, clinics, and other facilities at which medical professionals licensed by the State of Colorado, or any other state, provide massage services to the public in the ordinary course of their medical profession.
  - 4) Medical facilities licensed by the State of Colorado.
  - 5) Barber shops, beauty salons, and other facilities at which barbers and cosmetologists licensed by the State of Colorado provide massage services to the public in the ordinary course of their professions.
  - 6) Bona fide athletic clubs that are not engaged in the practice of providing massage therapy to members or to the public for remuneration, or an athletic club that does not receive more than 10 percent of its gross income providing massages to the athletic club's members or to the public.
  - 7) A place of business where a person offers to perform or performs massage therapy:
    - i. For 72 hours or less in any six-month period; and
    - ii. As part of a public or charity event, the primary purpose of which is not to provide massage therapy.
  - 8) A place of business where a licensed massage therapist practices as a solo practitioner, and:
    - i. Does not use a business name or assumed name; or
    - ii. Uses a business name or assumed name and provides the massage therapist's full legal name or license number in each advertisement, and each time the business name or assumed name appears in writing; and
    - iii. Does not maintain or operate a table shower.

(b) The City may verify the exempt status of a business or facility in keeping with the intent of this Article.

## 5-32-60 Denial, Revocation, or Suspension

- a) The City may deny an application for a massage facility license if the Licensing Authority finds that:
  - 1) Any required fee is not paid; or
  - 2) Zoning would not allow a massage facility; or
  - 3) The applicant or an owner, prospective owner, employee, or prospective employee has been convicted of, or has entered a plea of guilty or nolo contendere that is accepted by the court for a felony or misdemeanor for prostitution, as described in C.R.S. § 18-7-201, as may be amended; solicitation of a prostitute, as described in C.R.S. § 18-7-202, as may be amended; a human trafficking-related offense, as described in C.R.S. §§ 18-3-503 or 18-3-504, as may be amended; money laundering, as described in C.R.S. § 18-5-309, as may be amended; or
  - 4) The applicant or an owner, prospective owner, employee, or prospective employee is registered as a sex offender or is required by law to register as a sex offender, as described in C.R.S. § 16-22-103, as may be amended; or
  - 5) The applicant or an owner, prospective owner, employee, or prospective employee has one or more previous revocations or suspensions of a license to operate a massage facility; or
  - 6) An employee of the massage facility for which the applicant has filed an application for a license has not submitted to a required Background Check pursuant to this Article before commencing employment with the massage facility; or
  - 7) The applicant or an owner or prospective owner of the massage facility for which the applicant has filed an application for a license has not submitted to a required Background Check pursuant to this Article at least 30 days before, as applicable, being granted a license to operate the massage facility or assuming an ownership interest in a massage facility that would make the prospective owner an owner.
- b) The City shall have discretion to deny an application or determine that an owner or prospective owner, or employee or prospective employee, is ineligible to be an owner or employee after considering, in accordance with C.R.S. § 24-5-101, as may be amended, an applicant's, owner's, prospective owner's, employee's, or prospective employee's conviction of, or plea of guilty or nolo contendere that is accepted by the court for felony or misdemeanor fraud, theft, or embezzlement, as described in C.R.S. § 18-4-401, as may be amended.
- c) In the event that the City takes into consideration information concerning the applicant's, owner's, prospective owner's, employee's, or prospective

employee's criminal history record in acting on a license application, the City shall also consider any information provided by the applicant, owner or prospective owner, or employee or prospective employee regarding the criminal history, including, but not limited to, evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially the mitigating factors pertaining to the period between the applicant's, owner's or prospective owner's, or employee's or prospective employee's last criminal conviction and the consideration of the applicant's, owner's or prospective owner's, or employee's or prospective employee's application for a license or renewal, ownership or prospective ownership of a massage facility, or employment or prospective employment by a massage facility.

- d) In addition to any reason in this Section or Section 5-4-60, and notwithstanding any provision of this Ordinance to the contrary, the City may suspend or revoke a license, or may not renew a license, based upon a finding of one or more of the following:
  - 1) The licensee has engaged in any prohibited act as set forth in this Article; or
  - 2) The licensee employs a person who has not submitted to a Background Check or an owner of the massage facility has not submitted to a Background Check as required pursuant to this Article; or
  - 3) The licensee employs a person who has been convicted of or entered a plea of nolo contendere that is accepted by the court for an offense listed in this Section or is registered as a sex offender or is required by law to register as a sex offender, as described in C.R.S. § 16-22-103, as may be amended; or
  - 4) An owner of the licensed massage facility has been convicted of or entered a plea of nolo contendere that is accepted by the court for an offense listed in this Section or is registered as a sex offender or is required by law to register as a sex offender, as described in C.R.S. § 16-22-103, as may be amended.
- e) The Finance Director or their designee may temporarily suspend a massage facility license with a hearing to be scheduled within 15 days when the Finance Director or their designee finds:
  - 1) The licensee willfully failed to disclose any information on the application as required; or
  - 2) The licensee knowingly permitted a person who does not hold a valid license pursuant to C.R.S. § 12-235-107, as may be amended, to perform massage therapy; or

- 3) A pattern of activity that the massage facility is committing human trafficking-related offenses as described in C.R.S. §§ 18-3-503 and 18-3-504, as may be amended; or
- 4) The licensee failed to permit an inspection any time the facility is open for business.

#### 5-32-70 Transfer of Massage Facility Ownership

Each license shall authorize the operation of such an establishment only at the location described in such license and in conformity with all applicable laws and regulations. No license shall be transferred or assigned to another person or to any other location. Upon the sale or change of ownership of a massage facility licensed hereunder, the transferee shall make application for a new license.

#### 5-32-80 Operating Requirements of Massage Facilities

Every licensed massage facility shall be required to comply with the following operating requirements.

- (a) List of Employees. Maintain a list of all employees on site including the start date of employment, full legal name, date of birth, home address, telephone number, and employment position of each employee.
- (b) Government Identification for Licensees, Operators, and Employees. Require that all licensees, operators, and employees have at least one of the following forms of valid government identification, and immediately present such identification to the Licensing Authority or their designee upon request:
  - 1) A United States military card or military dependent's identification card; or
  - 2) A United States Coast Guard Merchant Mariner card; or
  - 3) A Native American tribal document; or
  - 4) A valid Colorado driver's license or Colorado identification card issued pursuant to C.R.S. Title 42, Article 2, unless the applicant holds a license or card issued pursuant to C.R.S. Title 42, Article 2, Part 5; or
  - 5) A valid driver's license or identification card issued by another state, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States that is compliant with the federal "REAL ID Act," as may be amended; or
  - 6) A valid United States passport; or
  - 7) A valid United States permanent resident card; or
  - 8) Any other valid type of identification that requires proof of lawful presence in the United States to obtain.

- (c) Identification for Licensed Massage Therapists. Require that all licensed massage therapists maintain copies of valid massage therapy licensure, as required by C.R.S. § 12-235-107, as may be amended, and a form of government identification containing the massage therapist's name and address, that both must be immediately presented upon request to the Licensing Authority, the Licensing Authority's designee, or law enforcement.
- (d) Records. Maintain a complete set of records, including a log of all massage therapy administered at the facility. The records shall include all accounts, invoices, payroll, and employment records of the massage facility. The log shall include the date, time, and type of each massage therapy administered, and the name of the massage therapist administering the massage therapy. The licensee shall retain the records and logbook for a minimum of one year following any massage therapy. The records and log shall be subject to inspection upon request by the Licensing Authority, the Licensing Authority's designee, and law enforcement, during normal business hours.
- (e) Licensure and Licensure Display. Maintain a valid massage facility business license prior to and during all periods of operation and conspicuously display the license at all times at the licensed premises.
- (f) Use of Business Name. Operate under or conduct business under only the designation specified in the license.
- (g) Control of Licensed Premises. Licensee shall possess and maintain possession of the premises for which the license is issued by ownership, lease, rental or other arrangement for possession and use of the premises.
- (h) Notice of Changes in Materials Facts in Application. An owner and/or operator of a massage facility licensed hereunder shall report to the City in writing any change of material fact set forth in the license application.
- (i) Notice of Changes in Financial Interest of Owner(s). An owner and/or operator of a massage facility licensed hereunder shall report each transfer or change of financial interest in the license and/or the licensee of the City prior to any such transfer or change.
- (j) Clothing. Ensure that all operators, employees and contractors remain fully clothed in professional attire while administering massage or otherwise visible to clients on business premises, including premises designated by the client through an outcall massage service or mobile massage unit.

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

- a. Operate a massage facility without a valid massage facility license, or during a period of suspension, or after license revocation.
- b. Fail to submit to a Background Check as required by this Ordinance.
- c. Employ a person who has not submitted to a Background Check as required by this Ordinance.
- d. Allow a person who does not hold a valid massage therapy license pursuant to C.R.S. § 12-235-107, as may be amended, to perform massage in a massage facility.
- e. Advertise to a prospective client that services including prostitution, sexual acts, escort services, sexual services, or services related to human trafficking disguised as legitimate services, are available.
- f. Permit sexual acts or sexual services within or near a massage facility or in relation to massage therapy.
- g. Deny inspection of a massage facility by law enforcement, code enforcement, the Finance Director or designee.
- h. Refuse, interfere with, or elude immediate identification of employees of the massage facility to law enforcement, code enforcement, or the Finance Director or designee.
- i. Fail to immediately report to law enforcement any act of sexual misconduct occurring in a massage facility.
- j. Allow an employee or contractor of a massage facility to provide massage therapy without being fully clothed.
- k. Require client nudity as part of a massage without the client's prior consent.
- l. Allow a massage facility to be open and practicing massage therapy without a licensed massage therapist on the premises.
- m. Permit a person in a massage facility to make an agreement with an employee or contractor to engage in any prostitution-related offense in the massage facility or any other location.

- n. Permit a massage facility to be used for housing, sheltering, or harboring any person, or as living or sleeping quarters for any person; except that an owner and the owner's family members who operate a massage facility as a home business are exempt from the prohibited activity in this subsection (n).
  - o. Operate an erotic parlor on the premises of a massage facility.

#### 5-32-100 Inspections

- a. No owner, operator, manager, massage therapist, or employee shall fail to immediately grant full massage facility access any time such establishment is open for business by agents of the County, including, but not limited to, the Finance Director, Building Safety Inspectors, Health Inspectors, Fire Safety Inspectors, Code Enforcement or any of their designees, and law enforcement officials.
- b. All rooms, cabinets, and storage areas shall be subject to inspection, and any locked rooms, cabinets, or storage areas shall be promptly opened for inspection.
- c. Each massage facility shall keep a list of employees open to inspection without unreasonable delay.
- d. Each massage facility shall keep a complete book of records to include a log of all massage therapy administered at the facility open to inspection without unreasonable delay.
- e. Inspectors may request to review a State-issued massage therapist license for any massage therapist at any time during an inspection.
- f. All owners, operators, managers, massage therapists, employees, contractors, or persons occupying the facility other than clients shall present identification when requested during an inspection and shall not elude identification.

#### Section 5-32-110 Violations; Penalties

In addition to any action that may be taken by the Finance Director or designee or Hearing Officer, as applicable, with respect to the suspension, revocation, or non-renewal of a license, violation of this Article shall be a civil infraction and, upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000), or such other higher amount as may be prescribed by law. Each

act of violation and every day that any such violation shall occur shall constitute a separate offense.

Section 2. Chapter 6 Animals, Division 8 – Kennel License shall be amended as follows:

Section 6-4-700 Kennel Licenses required.

It shall be unlawful for any person, firm, or corporation to maintain or operate any kennel within the City without first having obtained a City business license. This section does not apply to and will not be construed to require a separate kennel license for a licensed veterinarian to operate an animal hospital.

Sec. 6-4-710. Licensing; procedure.

- a) **Filing.** Applications for a new license or renewal of an existing license under the provisions of this Chapter and Chapter 5 shall be submitted to the Finance Department.
- b) **Compliance with City regulation.** No kennel business license shall be issued unless the applicant provides a copy of their State Department of Agriculture Pet Animal Care and Facilities Act (PACFA) license.
- c) **Inspections.** The animal control officer or code enforcement officer shall have the right to inspect any premises licensed under this Section at any time, and nothing shall prevent the entry onto private property for the purposes of such inspection. The application for or issuance of a City business license shall constitute consent by the licensee to such entry and inspection.

Sec. 6-4-720. Renewal.

- a) All business licenses must be renewed annually.
- b) At the time of renewal, the Finance Department will confirm with code enforcement that the license holder has not been found to have violated any health or safety laws of the City or the State or been cited for animal neglect or cruelty.
- c) If there have been findings, convictions or guilty pleas, or pending cases, the renewal application will be set for a hearing to determine whether the license should be denied pursuant to the procedures in Article 5 of this Code.

Sec. 6-4-730. Suspension.

A Hearing Officer may suspend or revoke a kennel business license if, pursuant to a public hearing, it finds any of the following:

- 1) Any basis set forth in Section 5-4-60;

- 2) The kennel is maintained so as to be a public nuisance;
- 3) The kennel is maintained so as to be detrimental to the health or safety of the animals therein;
- 4) The kennel is maintained so as to be detrimental to the health, safety of persons residing in the immediate vicinity; or
- 5) The kennel refuses entry to any animal control or code enforcement officer for the purposes of inspection.

Section 3. Section 3-28-70 shall be deleted in its entirety and the section reserved for future use.

Section 4. Section 3-28-85 subsections (c), (i), and (m) regarding exemptions and responsibilities of taxpayers shall be amended to read as follows:

(c) Vendor responsibility for collection of and remittance of tax and license.

- 1) Collection of tax. Every retailer or vendor engaged in business or selling at retail, as such are defined in this Article, shall, irrespective of the provisions of Section 3-28-40, be liable and responsible for the payment of taxes in the amount yielded by applying the rate imposed by Section 3-28-40 hereof to all taxable sales made by such retailer or vendor of commodities or services as specified in Section 3-28-75 hereof.
- 2) Remittance of tax. Every retailer or vendor engaged in business and selling at retail, as such are defined in this Article, shall file a return as prescribed in this Article with the Finance Director on or before the twentieth day of the month, unless the twentieth day falls on a weekend day or holiday; then the return is due on the first business day thereafter, for the preceding month or months under report and remit taxes in the amount yielded by applying the rate imposed by Section 3-28-40 hereof to such sales and also any excess tax amounts as provided in Subsection (i) of this Section. The retailer shall add the tax as a separate and distinct item, and such tax shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts.
- 3) License for vendors. Unless otherwise exempt under this Article, it shall be unlawful for any person to engage in business in the City as defined in this Article, without first having obtained a license therefor, which license shall be granted and issued by the Finance Director. If a license is not required but sales are occurring within the City, the vendor must apply for and keep current a sales tax account.

(i) Contractors, owners or lessees of realty; methods of paying use tax when construction permit required. Subject to the provisions of Section 3-32-60

hereof, every contractor who shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure or improvement to real property, and who shall purchase lumber, fixtures or any other construction materials and supplies used therefor and every owner or lessee of realty located in the City upon which any improvements have been or will be made or upon which any articles of tangible personal property are or will be attached, shall pay the City use tax as follows:

- 1) Taxes for construction materials and prefabricated goods and materials. Taxes for all purchases of construction materials and prefabricated goods and materials shall be satisfied in full. The owner of the property for which such materials were purchased shall be ultimately responsible for the payment of any City use taxes that are not properly paid by the contractor. Records supporting such construction use tax payments and all related construction records are subject to review by the Finance Director in accordance with Section 3-32-60 hereof. Any overpayment of an estimated construction use tax shall be subject to refund in accordance with Section 3-28-105 hereof.

...

(m) Excess collections; failure to remit collections. If any vendor shall during any reporting period collect any excess City tax amounts, the vendor shall remit to the City the full net amount of the tax imposed in this Article, together with such excess City tax amounts. The retention by the vendor of any excess tax amounts or the intentional failure to remit punctually to the City the full amount required to be remitted by the provisions of this Article is a violation of this Article.

Section 5. Section 3-28-140 shall be amended to read as follows:

Sec. 3-28-140. Business license required; term.

A business license shall be required for every retailer or vendor that is engaged in business in the City, unless exempt as set forth in 5-4-20. A business license shall be granted and issued by the Finance Director or designee for a period of one year.

Where no business license is required but sales of tangible personal property or furnishing of services are provided within the City limits, the seller is required to open a sales tax account and pay sales and use taxes to the City. A failure to obtain a business license or to remit sales tax is a violation of this municipal code.

Section 6. Sections 3-28-150, 3-28-160, 3-28-170, 3-28-180, and 3-28-190, shall be deleted in their entirety and 3-28-200 has been relocated to Section 5-4-30 and shall be removed from Article 3.

Section 7. Article 3-36, Telephone Utility Company Occupation Tax, shall be deleted in its entirety and reserved.

Section 8. Section 3-32-60 shall be amended to read as follows:

Sec. 3-32-60. Payment requirements; exemption certificate.

The use tax imposed by Section 3-32-30 may be paid by estimate at the option of the taxpayer through payment to the City of an amount equal to the City's Use Tax rate pursuant to the City's policy setting forth the criteria for the percentage of the total cost of the project, as indicated on the application for the City building permit. The City shall, upon receipt of such payment, issue a certificate of exemption from payment of any further sales or use tax for the materials to be used, stored or consumed pursuant to such building permit.

Section 9. Section 5-4-30 shall be replaced with the following:

Sec. 5-4-30. Exception to license.

- a) No license shall be required for infrequent sales of tangible personal property at the residence of the owner of the property to be sold if the property was originally purchased for use by members of the household where the sale is conducted and no person other than such household members conducts all or any portion of the sales.
- b) No license shall be required under this Article for a contractor who:
  1. Has obtained a contractor license pursuant to Chapter 16 of Article 15 of this Code; and
  2. Does not directly or indirectly, or by a subsidiary own, rent, or maintain a building, store, office, salesroom, warehouse, or other place of business within the City.
- c) No license shall be required for a retailer or vendor that either does not have physical presence within the City or has only incidental physical presence within the City, as defined in C.R.S. § 39-26-802.9.
- d) No license shall be required under this Article for any person engaging in tree care as defined in Chapter 68 of Article 5 of this Code, provided such person:
  1. Has obtained a license pursuant to Chapter 68 of Article 5 of this Code;
  2. Does not directly or indirectly, or by a subsidiary, own, rent, or maintain a building, store, office, salesroom, warehouse, or other place of business within the City.

Section 10. Section 5-98-70 shall be amended to read as follows:

Licenses issued pursuant to the provisions of this Article may be revoked or suspended by the Hearing Officer pursuant to Section 5-4-60.

Section 11. All sections and subsections, not expressly amended or modified herein, remain in full force and effect.

Section 12. As provided in City Charter Section 5.9(A), this Ordinance, either as presented or as amended, shall be published in full as it was adopted after the initial reading. This Ordinance shall be in full force and effect five days after its final publication, as provided in City Charter Section 5.8, except as set forth herein.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 21<sup>st</sup> DAY OF OCTOBER 2025.

INTRODUCED, PASSED ON FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY THIS 4<sup>th</sup> DAY OF NOVEMBER 2025.

CITY OF BRIGHTON, COLORADO

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GREGORY MILLS, Mayor

ATTEST:

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NATALIE HOEL, City Clerk

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APPROVED AS TO FORM:

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ALICIA CALDERÓN, City Attorney