



CO L O R A D O

**Department of
Regulatory Agencies**

**2014 Sunset Review:
Colorado Massage Parlor Code**

*Office of Policy, Research and Regulatory Reform
October 15, 2014*



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2014

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Massage Parlor Code. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2015 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 48.5 of Title 12, C.R.S.

Sincerely,

A handwritten signature in cursive script that reads 'Barbara J. Kelley'.

Barbara J. Kelley
Executive Director





COLORADO

Department of Regulatory Agencies

2014 Sunset Review Colorado Massage Parlor Code

SUMMARY

What Is Regulated?

The Colorado Massage Parlor Code (Code) does not create a regulatory program. Rather, it grants to local jurisdictions the authority to regulate massage parlors, and it provides the framework for that regulation.

Why Is It Regulated?

The Code was enacted as a means to combat prostitution and human trafficking in the state.

Who Is Regulated?

Since the Code represents a grant of authority to local jurisdictions to regulate massage parlors, and does not create a regulatory program itself, it is difficult to ascertain the number of licensed massage parlors in the state. However, a survey conducted as part of this sunset review suggests that between 13 and 17 massage parlors have been licensed.

What Does It Cost?

Any costs associated with the Code are borne by those local jurisdictions that implement regulation pursuant to the Code.

What Disciplinary Activity Is There?

Five survey respondents reported having revoked or otherwise disciplined the license of a massage parlor within the previous five years. The underlying reason for the discipline was most often attributed to prostitution or human trafficking.

KEY RECOMMENDATIONS

Sunset the Code.

Rather than creating a regulatory program *per se*, the Code grants local jurisdictions the express authority to regulate massage parlors. However, of the nine municipalities known to have enacted laws pursuant to the Code, eight are home rule cities and could retain their laws without the Code. Neither the remaining municipality, nor the sole county known to have enacted a law under the Code, has any active massage parlor licensees in their jurisdictions. Therefore, it is reasonable to conclude that the Code is not necessary to protect the public health, safety and welfare. The General Assembly should sunset the Code.

MAJOR CONTACTS MADE DURING THIS REVIEW

Associated Bodywork and Massage Professionals
Colorado Association of Chiefs of Police
Colorado Counties, Inc.
Colorado Department of Law
Colorado Department of Regulatory Agencies, Division of Professions and Occupations
Colorado District Attorneys' Council
Colorado Municipal League

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.colorado.gov/opr.

The grant of regulatory authority to local governments provided by the Colorado Massage Parlor Code (Code), as enumerated in Article 48.5 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2015, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Code pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently authorized regulation of massage parlors should be continued for the protection of the public. During this review, DORA must determine whether the Code serves to protect the public health, safety or welfare, and whether the Code represents the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff interviewed staff of DORA's Division of Professions and Occupations tasked with administering the Massage Therapy Practice Act (Practice Act), state and national professional associations, representatives of various local governments and representatives of various law enforcement agencies; surveyed Colorado's municipalities, counties, sheriff's offices and police departments; and reviewed Colorado statutes.

Profile of the Industry

When discussing massage, it is important to draw the distinction between the individuals who perform massage and the business establishments in which they work.

There are two types of individuals who perform massage. Massage therapists are individual practitioners licensed under the Practice Act. They are regulated by the Director of the Division of Professions and Occupations within DORA. The services they offer are referred to as massage therapy.

Unlicensed individuals may also perform massage, so long as such services do not fall within the definition of massage therapy, as that term is defined in the Practice Act. The Code enables local jurisdictions to regulate the establishments in which these individuals work—massage parlors.

Legal Framework

History of Regulation

The Colorado Massage Parlor Code (Code) was enacted in 1977 in an attempt to mitigate prostitution in the state. House Bill 77-1558 (HB 1558) established the basic regulatory structure that endures to this day. In short, the Code authorizes local governments to license massage parlors, but does not require them to do so.

Although the definition of the term “massage” in the Code reads the same today as it did in 1977, the definition of the term “massage parlor” has changed over the years. As originally defined in HB 1558, a massage parlor was a place where massage services were offered, excluding training rooms of schools and professional and amateur athletic teams and licensed health care facilities.

The definition of massage parlor was amended in Senate Bill 90-37 to specifically exclude those premises operated for the purpose of massage therapy performed by a massage therapist. The bill further defined a massage therapist as one who had completed at least 500 hours of training in massage therapy.

The Code underwent its first sunset review in 1991 and was continued by Senate Bill 92-99 until 2002. That review recommended minimal changes to the Code.

Although the primary purpose of Senate Bill 08-219 (SB 219) was to regulate, for the first time, massage therapists, it also amended the Code. The exemption of massage therapists from the definition of massage parlor was amended to conform to the new registration scheme, such that premises where registered massage therapists perform massage therapy are specifically excluded from the definition of massage parlor.

Additionally, SB 219 specifically prohibited any local government from regulating the practice or profession of massage therapy. Although this provision was inserted into the Massage Therapy Practice Act, it directly impacted the provisions of the Code authorizing local governments to regulate massage parlors.

Finally, the Code was amended in 2012 to require licensed massage parlors to post certain, statutorily defined notices and warnings pertaining to the illegality of those under the age of 18 receiving massage and the illegality of human trafficking.

Summary of the Colorado Massage Parlor Code

The Code does not create a state-level regulatory program. Rather, it authorizes local governments, referred to as local licensing authorities, to regulate massage parlors within their respective jurisdictions. The Code establishes the minimum standards for such regulatory programs, and local licensing authorities may enact more stringent standards.²

Any city, city and county, county or incorporated town may elect to prohibit the operation of massage parlors within their respective jurisdictions. In such a case, the Code provides the requirements for putting such an issue on the ballot.³

In short, then, the options available to local licensing authorities are:

- Prohibit massage parlors;
- Regulate massage parlors in accordance with the Code;
- Regulate massage parlors in a manner that is more stringent than the Code; or
- Allow the operation of massage parlors without regulating them.

The Code defines a local licensing authority as:

the governing body of a municipality or city and county, the board of county commissioners of a county, or any authority designated by municipal or county charter, municipal ordinance, or county resolution.⁴

In general, a massage parlor is an establishment that provides massage.⁵ However, specifically exempted from this definition are:⁶

- Training rooms of public and private schools accredited by the State Board of Education or approved by the Division of Private Occupational Schools;
- Training rooms of recognized professional or amateur athletic teams;
- Licensed health care facilities; and
- Facilities operated for the purpose of massage therapy, as performed by a massage therapist who is licensed under the Massage Therapy Practice Act.

The Code defines massage as:

a method of treating the body for remedial or hygienic purposes, including but not limited to rubbing, stroking, kneading, or tapping with the hand or an instrument or both.⁷

² § 12-48.5-118, C.R.S.

³ § 12-48.5-117, C.R.S.

⁴ § 12-48.5-103(3), C.R.S.

⁵ § 12-48.5-103(6), C.R.S.

⁶ § 12-48.5-103(6), C.R.S.

⁷ § 12-48.5-103(5), C.R.S.

Applicants for a license to operate a massage parlor must submit to the local licensing authority:

- The name and address of the applicant, including the names and addresses of all partners, if a partnership, and the names and addresses of the president, vice-president, secretary and managing officer if a corporation, association or other form of organization;⁸ and
- The complete plans and specifications of the interior of the building in which operations are to be conducted.⁹

Before granting a license, the local licensing authority must consider:¹⁰

- The reasonable requirements of the neighborhood where the massage parlor is to be located;
- The desires of the inhabitants of the neighborhood; and
- All other reasonable restrictions which are or may be placed on the neighborhood by the local licensing authority.

Additionally, the local licensing authority may inspect the property at which the applicant proposes to operate and investigate the fitness of the applicant or its members or officers to conduct such a business. In conducting fitness investigations, the local licensing authority may have access to criminal history information furnished by criminal justice agencies.¹¹

To obtain a license, the following individuals must be found to be of good moral character:¹²

- Any officers, directors or stockholders holding over 10 percent of the outstanding initial capital stock of a corporation;
- Any officers or members holding more than 10 percent interest in a partnership, association or company; and
- Any person employed by, assisting, or financing, in whole or in part, any other person.

⁸ § 12-48.5-105(1), C.R.S.

⁹ § 12-48.5-113, C.R.S.

¹⁰ § 12-48.5-104(4), C.R.S.

¹¹ § 12-48.5-105(2), C.R.S.

¹² § 12-48.5-108(1), C.R.S.

Additionally, a local licensing authority must deny a license to:

- Any of the local licensing authority's peace officers or any of its inspectors or employees;¹³
- Any applicant whose proposed premises fail to meet the requirements of the Code;¹⁴
- Any applicant whose officers or directors are likely to violate the Code;¹⁵ and
- Any applicant proposing to operate in a neighborhood the reasonable needs of which are adequately addressed by existing licensees.¹⁶

No license application may be acted upon:¹⁷

- If, within the two years preceding the date of the application, the local licensing authority denied a license for the same location based on the needs of the neighborhood; or
- For a location in an area where the operation of a massage parlor is not permitted under the applicable zoning laws.

The fee for a new license cannot exceed \$350,¹⁸ and all licenses are valid for one year from the date of issuance.¹⁹

To renew a license, the licensee must apply not less than 45 days prior to the date of expiration, and the local licensing authority may hold a public hearing prior to renewal.²⁰ The fee for a renewal license cannot exceed \$150.²¹

Every licensee and every employee and agent of a licensee must obtain, and carry at all times while working, an identity card from the law enforcement agency within the licensing jurisdiction.²²

A local licensing authority may suspend or revoke a license if any of the licensee's employees or agents violate any of the provisions of the Code or any rules issued by the local licensing authority. A license may also be revoked or not renewed if a licensed premises is inactive for at least three months.²³

¹³ § 12-48.5-108(1)(d), C.R.S.

¹⁴ § 12-48.5-106, C.R.S.

¹⁵ § 12-48.5-106, C.R.S.

¹⁶ § 12-48.5-106, C.R.S.

¹⁷ § 12-48.5-116(1), C.R.S.

¹⁸ § 12-48.5-109(1)(a), C.R.S.

¹⁹ § 12-48.5-104(1), C.R.S.

²⁰ § 12-48.5-104(2), C.R.S.

²¹ § 12-48.5-109(1)(b), C.R.S.

²² § 12-48.5-105(4), C.R.S.

²³ § 12-48.5-107, C.R.S.

It is unlawful for any person to:²⁴

- Operate a massage parlor without holding a local license;
- Work in or upon the licensed premises of a massage parlor without obtaining and carrying a valid identity card;
- Obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when such person is under 18 years old, unless the person is accompanied by a parent or has a physician's prescription for massage services;
- Allow the sale, giving or procuring of any massage services to any person under the age of 18, unless such person is accompanied by a parent or has a physician's prescription for massage services;
- Permit any person under the age of 18 to be employed in a massage parlor;
- Operate a massage parlor while failing to display certain, Code-specified warnings pertaining to individuals under the age of 18 obtaining massage services and the illegality of human trafficking; and
- Operate a massage parlor while failing to display the name and contact information of a state or local organization that provides services or other assistance to victims of human trafficking.

Any person violating any provisions of the Code or any rules promulgated by a local licensing authority is guilty of a misdemeanor and may be punished by a fine of not more than \$5,000 for each offense, by imprisonment in the county jail for not more than one year, or both.²⁵

Regulation by Local Licensing Authorities

In order to ascertain the extent to which local governments have availed themselves of the grant of authority bestowed by the Code, the Department of Regulatory Agencies (DORA) surveyed 525 municipalities, counties, police departments and sheriffs' offices. The overall response rate to this survey was relatively low, at 10 percent.

The responses indicate that as many as 10 municipalities²⁶ have enacted ordinances pursuant to the Code. The responses further indicate that no counties have adopted resolutions pursuant to the Code.

Additional research revealed that at least one county has enacted legislation pursuant to the Code.

²⁴ § 12-48.5-110, C.R.S.

²⁵ § 12-48.5-111(1), C.R.S.

²⁶ Twelve respondents indicated that their respective jurisdictions have ordinances. Two of those responses were duplicates. One police department did not identify itself, so it is not possible to determine if the municipality it serves also responded to the survey. This makes it impossible to definitively conclude whether the total number is 9 or 10.

Program Description and Administration

The Colorado Massage Parlor Code (Code) is not an actual regulatory program. Rather, it grants to the state's various local governments the authority to regulate massage parlors and creates a rough framework under which such regulation could occur. As such, there is no actual program to describe.

In order to ascertain the extent to which local governments have availed themselves of the grant of authority bestowed by the Code, and to what effect, the Department of Regulatory Agencies (DORA) surveyed 525 municipalities, counties, police departments and sheriffs' offices. The overall response rate to this survey was relatively low, at 10 percent.

The responses indicate that at as many as 10 municipalities²⁷ have enacted ordinances pursuant to the Code. Three of those municipalities do not actively enforce their ordinances because there are no licensed massage parlors within their jurisdictions. A fourth cited a lack of resources.

The six municipalities that actively regulate massage parlors reported having between 13 and 17 massage parlors within all of those jurisdictions.

Five survey respondents reported having revoked or otherwise disciplined the license of a massage parlor within the previous five years. The underlying reason for the discipline was most often attributed to prostitution or human trafficking.

Additional research revealed that at least one county has enacted legislation pursuant to the Code. However, since that legislation was passed in 1989, that county has not issued any licenses.

²⁷ Twelve respondents indicated that their respective jurisdictions have ordinances. Two of those responses were duplicates. One police department did not identify itself, so it is not possible to determine if the municipality it serves also responded to the survey. This makes it impossible to definitively conclude whether the total number is 9 or 10.

Analysis and Recommendations

Recommendation 1 – Sunset the Colorado Massage Parlor Code.

The first sunset criterion asks, in essence, whether the statute under review is necessary to protect the public health, safety and welfare. Thus, the underlying premise is that if the statute does not serve to protect the public, it must be sunset.

The Colorado Massage Parlor Code (Code) does not create a regulatory program. Rather, it grants to local governments the authority to regulate massage parlors. No centralized, state-wide regulation of massage parlors exists.

In order to determine whether the Code serves to protect the public health and safety, it is reasonable to inquire as to the extent to which local governments have availed themselves of this grant of authority, and for those that have, to what effect. Such an analysis would provide insight into whether the local governments themselves perceive the need for regulation, for if they do, it is reasonable to expect a good number of them to have enacted ordinances, in the case of municipalities, and resolutions, in the case of counties.

Further, if they have enacted laws, are those laws being actively enforced and utilized? Such a line of inquiry would provide insight as to the effectiveness of the laws promulgated under the Code, and the Code's effectiveness at combating prostitution and human trafficking.

This is particularly relevant with respect to counties, which, under Colorado law, possess only those powers specifically granted to them by law, and non-home rule municipalities.

To answer these questions, in May 2014, the Department of Regulatory Agencies (DORA), surveyed 245 municipalities, 169 police departments, all 64 of Colorado's counties, and all 64 of Colorado's sheriffs. Since 17 surveys were returned as undeliverable, a total of 525 surveys were delivered. Complete survey results may be found in Appendix A.

A total of 52 survey responses were received, yielding an overall response rate of 10 percent. Of the responses, 30 (58.8 percent) came from municipalities, 11 (21.6 percent) came from police departments, 6 (11.8 percent) came from counties, and 4 (7.8 percent) came from sheriffs' offices.

Any overlap between the counties and the sheriffs' offices responding was minimal,²⁸ meaning that in all, the survey garnered the input from officials in as many as 10 counties. None of these respondents reported having availed themselves of the Code's grant of authority.

²⁸ One sheriff's office did not identify itself, so it is not possible to determine if the county it serves also responded to the survey. This makes it impossible to definitively conclude that there was no overlap.

Additional research revealed that only one county has enacted legislation pursuant to the Code, but has not issued any licenses pursuant to that legislation. Further, this additional research revealed that at least 15 counties, in addition to the 10 that responded to DORA's survey, for a total of 25 counties, do not license massage parlors.

Indeed, the only respondents to DORA's survey that have availed themselves of this grant were municipalities. After accounting for duplicates from municipal governments and their corresponding police departments,²⁹ the survey revealed that as many as 10 municipalities have enacted ordinances pursuant to the Code. Of these, three reported no active enforcement of their ordinances due to a lack of massage parlors in their respective jurisdictions, and a fourth attributed lack of enforcement to a lack of resources. A total of between 13 and 17 massage parlors were reported within four jurisdictions.

Also of note is the fact that at least 7 of the 10 municipalities that have enacted ordinances are home rule municipalities,³⁰ meaning they can retain their ordinances even without the Code. Of the remaining two non-home rule municipalities neither reported having any licensed massage parlors within their jurisdictions.

Thus, it is reasonable to conclude that relatively few local governments have availed themselves of the grant of authority bestowed by the Code. Repealing the Code would have no real impact, negative or positive, on these local governments because most of these municipalities can retain their ordinances even without the Code's existence, and those that cannot do so, have not licensed massage parlors anyway.

The limited data suggest that the Code is underutilized and/or that the grant of authority is unnecessary to address its underlying purpose.

As previously noted, the Code was originally enacted to aid in the fight against prostitution. Indeed, 17.3 percent of survey respondents reported massage parlors being used as fronts for prostitution, and another 11.5 percent reported them as being used as fronts for human trafficking. However, 7.8 percent of the respondents reported prostitution as being a problem in their respective jurisdictions, and only 3.9 percent reported it as a serious problem. Human trafficking is a problem in 7.9 percent of the respondent jurisdictions, but it is a serious problem in only 2 percent of those jurisdictions.

Thus, it would appear that the Code has not been a significant factor in the fight against prostitution.

²⁹ Twelve respondents indicated that their respective jurisdictions have ordinances. Two of those responses were duplicates. One police department did not identify itself, so it is not possible to determine if the municipality it serves also responded to the survey. This makes it impossible to definitively conclude whether the total number is 9 or 10.

³⁰ Due to one police department's failure to identify itself, it is not possible to determine whether it serves a home rule municipality.

This conclusion was bolstered in the interviews DORA staff conducted with stakeholders, particularly among the law enforcement community. While many advocated for the continuation of the Code, most conceded that when it comes to combating prostitution in the massage parlor industry, they rely on standard law enforcement techniques, as opposed to any regulatory structure provided by the Code.

Furthermore, between 2004 and March 2014, a total of 10 individuals were charged with criminal violations of the Code. Four of these cases resulted in convictions, while three awaited disposition at the time the data was retrieved. The Code is rarely utilized by district attorneys, indicating that where prostitution or other crimes are committed under the guise of a massage parlor, other charges are available.

Finally, it must be remembered that the Code was enacted prior to the passage of the Massage Therapy Practice Act (Practice Act) and the regulation of massage therapists. The Code specifically exempts licensed massage therapists. Therefore, it is illuminating to compare the definition of massage in the two statutes.

The Code defines massage as:

a method of treating the body for remedial or hygienic purposes, including but not limited to *rubbing, stroking, kneading, or tapping* with the hand or an instrument or both. (*emphasis added*).³¹

The Practice Act defines massage therapy as:

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; hydromassage; 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" or "massage therapy" does not include therapeutic exercise, intentional joint mobilization or manipulation, or any of the methods described in section 12-35.5-110(1)(e)(*emphasis added*).³²

³¹ § 12-48.5-103(5), C.R.S.

³² § 12-35.5-103(7), C.R.S.

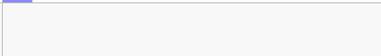
Although the definitions are not identical, they are substantially similar. Indeed, but for the various, statutorily enumerated forms of bodywork that are exempted from the Practice Act, it is difficult to see how an unlicensed masseuse could perform massage under the Code without violating the Practice Act. Thus, the two statutes are confusing to the point of creating an unworkable system.

Some may argue, however, that continuing the Code would allow those local governments—counties in particular—the ability to enact laws at some point in the future, should the need arise. While this argument has some merit, the data gleaned by the survey and the data surrounding criminal charges are telling. No survey respondent indicated that the Code significantly assists efforts to combat prostitution and very few individuals are charged with criminal violations of the Code. Indeed, only 15.2 percent of survey respondents reported that sunseting the Code would impact their respective jurisdictions, compared to 76.1 percent that reported it would have minimal to no impact.

Accordingly, it is reasonable to conclude that the Code is not necessary to protect the public health, safety and welfare. The General Assembly should sunset the Code.

Appendix A - Survey Results

1. Are you responding on behalf of a:

Response	Chart	Frequency	Count
County		11.8%	6
Municipality		58.8%	30
City and County		0.0%	0
Police Department		21.6%	11
Sheriff's Office		7.8%	4
Not Answered			1
		Valid Responses	51
		Total Responses	52

2. Please provide the name of your jurisdiction/agency:

Response
Town of Bayfield
Walsenburg Police Department
Craig Police Dept.
City of Lafayette Police Department
Simla Police Department
Town of Foxfield
Rio Blanco County Government
Town of Mt. Crested Butte
Firestone Police Department
Leadville Police Department
City of Cripple Creek
Lakewood Police Department
Timnath Police Department
Town of Paonia
Town of Granby

Lincoln
City of Greenwood Village
Jackson County Sheriff's Office
Edgewater Police Department
Erie Police Department
Town of Poncha Springs
Town of Elizabeth
Castle Rock Police Department
Woodland Park Police
Town of Alma Police Department
City of Edgewater
Mesa County Sheriff's Office
Rangely
Englewood Police Department
Dolores County Sheriff
City of Wheat Ridge
Aurora Police Department
Yuma County Sheriff Department
Morgan County
Thornton police Department
Carbondale Police
Las Animas County
City of Yuma Police Department
Colorado Springs
Basalt Police Department
City of Wheat Ridge
Town of Brookside
Baca County
City of Woodland Park

Fort Collins Police Services	
Basalt	
El Paso County	
Valid Responses	47
Total Responses	52

3. What is the approximate population of your jurisdiction?

Response	Chart	Frequency	Count
0 - 25,000		72.0%	36
25,001 - 50,000		10.0%	5
50,001 - 100,000		6.0%	3
Over 100,000		12.0%	6
Not Answered			2
		Valid Responses	50
		Total Responses	52

4. Does your jurisdiction currently have a resolution or ordinance on the books that regulates massage parlors?

Response	Chart	Frequency	Count
Yes		23.5%	12
No		76.5%	39
Not Answered			1
		Valid Responses	51
		Total Responses	52

5. If "yes", does your jurisdiction actively enforce this resolution/ordinance?

Response	Chart	Frequency	Count
Yes		31.6%	6
No		68.4%	13
Not Answered			33
		Valid Responses	19
		Total Responses	52

Why? Or Why not?

Response	
We have gotten complaints about criminal activity from some of these businesses. We have responded to those complaints and found that the business employees were offering sexual services to male customers.	
A few years ago, the Town of Firestone issued a business license for a massage parlor. Soon after the town received info that prostitution was being conducting. The info was investigated and arrests were made. The operation was shut down and the business license was revoked.	
No business of this type operating within city limits	
We use the DORA regulation for licensed massage therapists. We cannot create an ordinance based on the state DORA licensing regulations.	
No ordinance to enforce	
Enforcement is applied when applicable	
No massage parlors	
Edgewater's ordinance simply states that the Colo. Massage Parlor Code applies to massage parlors in the City and that violations of the Massage Parlor Code constitute violations of the Edgewater Code of Ordinances.	
The City used to license Massage Therapists, but when the law changed it is now done through the State. The City does not provide any type of sales license for Massage Parlors because they are a service oriented business and not a business that sells a product.	
Because the screening allows holders of massage education certificates from non-accredited or poorly accredited sham schools, any potential massage parlor operators simply get the state MT license. The statute prohibits additional regulation of a regulated profession by a municipality so we are limited to issuing the standard business license which imposes none of the restrictions and extra oversight that the massage parlor code does. Our massage environment has regressed to the level it was at prior to the municipal-based industry licensing of a few years ago that prompted state regulation at the behest of the industry. Our police department is in a constant game of cat-and-mouse with a handful (5 or 6) of businesses licensed as massage therapy providers that are actually fronts for adult-oriented massage and prostitution. It has been frustrating to the City to have this situation back. The cat-and-mouse approach that is necessitated is expensive and time consuming. Our residents are not happy.	
The police department only investigates those massage parlors where prostitution is suspected or alleged.	
Lack of resources	
It is substantially easier for a massage business to operate under a State massage therapy license than a municipal massage parlor license because massage therapy licenses are issued without a substantial background check. People with prostitution arrests in their past would not be able to get a municipal license.	
State code has taken this out of the local jurisdiction's hands.	
We have experienced an increase in prostitution services advertised through massage services.	
Repealed.	
Valid Responses	16
Total Responses	52

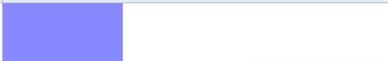
6. If your jurisdiction does not currently have a resolution/ordinance that regulates massage parlors, did it have one in the past?

Response	Chart	Frequency	Count
Yes		7.1%	3
No		92.9%	39
Not Answered			10
		Valid Responses	42
		Total Responses	52

If "yes", when was it repealed and why?

Response	Count
It was essentially repealed in 2006 when our only commercial space prohibited massage parlors and the Town did not include them in the revised zoning regulations.	
Ordinance still in effect	
Because of the DORA regulation for licensing massage therapists.	
Ordinance was repealed when Therapist Act was passed.	
Valid Responses	4
Total Responses	52

7. Are there any massage parlors currently operating in your jurisdiction?

Response	Chart	Frequency	Count
Yes		30.0%	15
No		64.0%	32
Don't Know		6.0%	3
Not Answered			2
		Valid Responses	50
		Total Responses	52

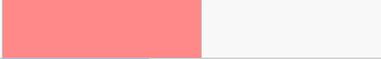
How many?

Response	
None	
approximately 20 possibly more	
5	
3	
1-3	
estimated 8-10	
1	
3	
8	
3 - 5 illegal parlors	
Unknown	
9 approximately	
6	
1 formal massage parlor and many independent individuals practicing massage	
10+ "Spas" with licensed massage therapists	
Valid Responses	15
Total Responses	52

8. Have there been problems associated with massage parlors in your jurisdiction?

Response	Chart	Frequency	Count
Yes		31.3%	15
No		68.8%	33
Not Answered			4
		Valid Responses	48
		Total Responses	52

9. Has your jurisdiction, within the last five years, revoked or otherwise disciplined a regulated massage parlor?

Response	Chart	Frequency	Count
Yes		10.0%	5
No		52.0%	26
Does not apply, because there is no regulation		38.0%	19
Not Answered			2
		Valid Responses	50
		Total Responses	52

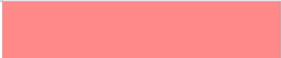
How many and for what reasons?

Response	
3 businesses - employees were arrested for prostitution.	
Only one for prostitution.	
None have applied	
Prostitution	
Our jurisdiction uses 12-48.5-101's definition of "massage parlor" to prohibit them. The reason we have 3 is because they were issued business licenses erroneously. But, because the state requires they be licensed locally and we don't give licenses, we can cite them under 12-48.5-101 in addition to a zoning violation.	
mostly minor offenses; one was a much larger multi-jurisdictional case, where felony prosecution and seizure of property occurred	
In reference to the aforementioned question relating to problems associated with massage parlors, there have been two investigations relating to prostitution in the last two years. One case was charged and prosecution was declined in the other due to jurisdictional complications (the owner also owned another massage parlor in a different city).	
We did an investigation where an employee was engaged in prostitution. She was arrested and the business closed on its own. The suspect fled the area and failed to appear for court.	
none in our county	
No because the approach has been for a person State certified as a massage therapist to obtain a business license and then to offer prostitution services or use non-certified people to offer prostitution services. WRPD has taken action against State certified massage therapy businesses on several occasions.	
Yes, three in 2013 through the assistance of a State and Federal task force for human trafficking.	
We received complaints about a massage parlor providing massages without being licensed by the State.	
There have been a number of "spas" investigated due to issues of human trafficking and prostitution from the Sheriff's Office.	
Valid Responses	13
Total Responses	52

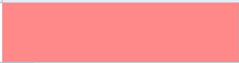
10. Please rate the extent to which prostitution is a problem in your jurisdiction.
 (5=serious problem)

Response	Chart	Frequency	Count
1		54.9%	28
2		29.4%	15
3		7.8%	4
4		3.9%	2
5		3.9%	2
Not Answered			1
		Valid Responses	51
		Total Responses	52

11. Please rate the extent to which human trafficking is a problem in your jurisdiction.
 (5=serious problem)

Response	Chart	Frequency	Count
1		70.6%	36
2		19.6%	10
3		2.0%	1
4		5.9%	3
5		2.0%	1
Not Answered			1
		Valid Responses	51
		Total Responses	52

12. Please rate the extent to which the state regulation of massage therapists, which began in 2009, has affected your jurisdiction.
 (5 =significant impact)

Response	Chart	Frequency	Count
1		62.0%	31
2		8.0%	4
3		10.0%	5
4		10.0%	5
5		10.0%	5
Not Answered			2
		Valid Responses	50
		Total Responses	52

13. Please indicate the level to which the Massage Parlor Code assists you in combating human trafficking in your jurisdiction.
 (5=significantly assists)

Response	Chart	Frequency	Count
1		79.2%	38
2		6.3%	3
3		10.4%	5
4		4.2%	2
5		0.0%	0
Not Answered			4
		Valid Responses	48
		Total Responses	52

14. Please indicate the level to which the Massage Parlor Code assists in combating prostitution in your jurisdiction.
(5=significantly assists)

Response	Chart	Frequency	Count
1		75.0%	36
2		4.2%	2
3		12.5%	6
4		8.3%	4
5		0.0%	0
Not Answered			4
		Valid Responses	48
		Total Responses	52

15. Please rate the impact to your jurisdiction if the State were to repeal the Massage Parlor Code.
(5=significant impact)

Response	Chart	Frequency	Count
1		58.7%	27
2		17.4%	8
3		8.7%	4
4		6.5%	3
5		8.7%	4
Not Answered			6
		Valid Responses	46
		Total Responses	52

16. Are massage parlors in your jurisdiction used as fronts for any of the following types of criminal activity? Check all that apply.

(Respondents were allowed to choose **multiple** responses)

Response	Chart	Frequency	Count
Prostitution		17.3%	9
Human Trafficking		11.5%	6
Selling illicit drugs		1.9%	1
Other (please explain):		21.2%	11
		Valid Responses	52
		Total Responses	52

Additional Information:

Response	
Only once, operation shut down shortly after business was issued a business license.	
None	
Prostitution and other illegal activities may occur at some of the parlors in town, however I do not think the business is only a front for illegal activity.	
No	
One was shut down as a result of a prostitution investigation.	
None that I know of	
have none in county	
The State certified massage therapy businesses are used for fronts for prostitution and human trafficking.	
Unknown	
Tax evasion and fraud	
Not that we are aware of	
Valid Responses	11
Total Responses	52

If you have any additional thoughts, concerns or comments, please include them here:

Response
Paonia has a large number of massage therapists for its relative population. Our therapists have complied with the regulations in an effort to validate other holistic approaches to health care.
The oversight and management of these facilities is better done at the state level.
The statute implies that local jurisdictions must license massage parlors. We do not allow them, however. Also, this law is not included in the Peace Officer's Handbook. They think there should be a law, but don't find one. It should be included, or your division should send out the information.
Like in the previous question, the massage parlors may be operating in conjunction with the illegal activities presented in this survey, or separately from the actual business, but I do not think any of the parlors here are "only" fronts for illegal prostitution or other illegal activities.
Just FYI, we define our massage establishments as massage therapists. We do not have what would be normally considered classic massage parlors. We regulate the massage therapists under the business license codes.
We don't regulate massage parlors other than to have them be licensed as a business. Typically they don't request a business license. We have had maybe 2 issues with massage parlors in the past that operated as a front for prostitution.
Please note that because the City does not currently have any massage parlors, the final 4 questions were difficult to answer other than in the context of the deterring effect of having the law in place.
Very small population county with only one spa, hair dresser and Massage combination locally ran.
Email is the best way to contact me.
The massage parlor code was most effective at combating prostitution and human trafficking in Wheat Ridge when cities were able to regulate the therapeutic massage industry. We know of "therapists" who were denied a City massage therapy license (and offered instead the more restricted massage parlor license) because of sham credentials, but who now possess the Colorado massage therapist license, thus tying our hands in preserving public health and safety and neighborhood integrity. The execution of massage therapist backgrounds and approvals needs to be far more stringent than it is.
The State Regulations provide us the resources we need should we encounter a massage parlor that is engaged in illicit activity. We have looked into a couple of the businesses but have no reason at this time to believe any illegal activity is taking place.
Licenses should be removed from those involved with prostitution operations.
Should we ever have a place that wants to be a massage parlor v. a massage therapist; the DORA regulations would be helpful. Smaller municipalities have difficulty drafting and enforcing the regulations they draft. DORA has the authority and duty to assist us with the expertise to do so. Massage parlors need regulation for many reasons and DORA is the best place to host the regulation.
Did not answer questions that we have not had experience with
All of our houses of prostitution operate as Massage Therapy Centers with State issued licenses and are immune from local control through background check. We have had some success reporting prostitution arrests of State licensed therapists to DORA.
Contact our Sheriff's Office for further information

Persons and organized groups frequently use massage parlors and internet postings of massage services as a front for prostitution services. Our investigations led to our belief that women live in these store fronts and working 7 days a week, 10 hours a day. The State needs to continue legislative and regulatory actions to help these women caught up in the middle of this criminal activity.

We used the massage parlor code in issuing business licenses to make sure that the entities proposing to have massage businesses are legit.

There seems to be a gap in the law regarding the interplay between the Colorado Massage Parlor Code 12-48.5-101, et seq., C.R.S., and the Massage Therapy Practice Act 12-35.5-101, et seq., C.R.S. The gap seems to appear when a County (or other local government) has a massage parlor ordinance, but a facility opens up in its jurisdiction with licensed massage therapists under the Massage Therapy Practice Act. If the facility is operated for the purpose of massage therapy performed by a massage therapist, then it is not a massage parlor by definition. C.R.S. § 12-48.5-103(6). This seems to preclude any type of County business licensure under the Massage Parlor Code, because facilities can just open up under the auspices of being a facility operating to perform massage therapy. Something in the Code that allowed for a County to regulate the business could be helpful since DORA has made it clear it regulates the individual therapists (specifically their licenses) but not the actual businesses. Always happy to discuss further-- thank you.

Valid Responses	19
Total Responses	52