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MEMORANDUM

TO: Town of New Castle Town Council
FROM: Garfield & Hecht, P.C.
RE: HB24-1371 Massage Facility Background Checks
DATE: April 30, 2026

In 2024, the General Assembly mandated that municipalities perform background checks on massage facility operators, owners, and employees within their jurisdiction. To comply, the Town Council must pass an ordinance or resolution delegating an authority to review background check materials by July 1, 2026.

Overview

The Town must establish a process that subjects massage facility operators, owners, and employees (“covered parties”) to background checks by resolution or ordinance.¹ The Town Council may review applications itself or identify another authority (*i.e.*, police chief or town administrator) in a resolution or ordinance.^{2,3} Operators are those operating a massage facility (and who are licensed where required), excluding massage therapists (who must obtain a state occupational license).^{4,5} Owners are parties who hold a legal ownership in a massage facility excluding non-involved owners of stock in public companies that own or operate massage facilities.⁶ “Employees” are massage facility workers and independent contractors performing routine operations, but not massage therapists or independent facilities contractors with little client contact.⁷

¹ C.R.S. § 30-15-401.4(3.5).

² C.R.S. § 30-15-401.4(2)(e).

³ This statute details both optional licensing and mandatory background checks and broadly defines the relevant entity as the “licensing authority.” For ease of reference, we refer to the “licensing authority” as the Town in this memo.

⁴ Massage therapists are licensed subject to C.R.S. § 12-235-101 et seq, which includes a fingerprint-based background check as found in C.R.S. § 12-235-108(2).

⁵ C.R.S. § 30-15-401.4(2)(h.3).

⁶ C.R.S. § 30-15-401.4(2)(h.5).

⁷ C.R.S. § 30-15-401.4(2)(a.7)(I)-(II).

The statute requires local governments and counties to collaborate and apply county ordinances to massage facility licensing requirements.⁸ But municipalities must adopt and apply their own regulations for mandatory background checks for covered parties.⁹

Background Check Process

Covered parties must submit to a fingerprint-based criminal history check pursuant to C.R.S. § 24-33.5-424.5.¹⁰ When a fingerprint-based criminal history check is not possible or shows an arrest without a disposition, a criminal history check will be a name-based judicial records check.¹¹ Fingerprinting may be done by law enforcement or a third party, including third party companies that performs fingerprinting electronically (CBI's preferred method), and the fingerprints are then transmitted to CBI. Third-party companies who do the fingerprinting cannot retain applicant information for more than 30 days after submitting the fingerprints to the CBI.¹² The CBI then conducts the criminal history check and forwards the fingerprints to the FBI for a national criminal history check.¹³ CBI and FBI reports are given to the Town for review.¹⁴ The Town has broad discretion in reviewing applications, but some mandatory provisions apply.

In reviewing a covered party's criminal history, the Town shall consider all information provided by the applicant, including evidence of mitigating factors, rehabilitation, character references, and educational achievement, paying special attention to mitigating factors occurring between the covered party's last conviction and background check.¹⁵ Individuals who are covered parties when the ordinance takes effect must submit the background check application no later than July 1, 2026.¹⁶ Prospective employees must submit a background check before starting work, and a prospective operator or owner must submit a background check at least thirty days before assuming an ownership interest.¹⁷

Parties who have registered as a sex offender or have been convicted of or entered a plea of nolo contendere for solicitation of prostitution, a human trafficking-related offense, or money laundering may not become owners,¹⁸ but may be hired or retained as an employee when the

⁸ C.R.S. § 30-15-401.4(3)(b).

⁹ C.R.S. § 30-15-401.4(1)(a)(III) (“[r]equire every local government to in the state that has a massage facility within its jurisdictional boundaries to establish a local process that ensures the background checks are conducted throughout the state in accordance with the requirements and limitations set forth in this section.”).

¹⁰ C.R.S. § 30-15-401.4(3.5).

¹¹ C.R.S. § 24-33.5.424.5(1)(g).

¹² C.R.S. § 24-33.5.424.5(1)(c) and (d). If a third-party takes fingerprints, the applicant must authorize the third party to provide the CBI with the fingerprints and the third party must actually do so.

¹³ C.R.S. § 24-33.5.424.5(1)(e).

¹⁴ C.R.S. § 24-33.5.424.5(1)(f).

¹⁵ C.R.S. § 30-15-401.4(4)(c).

¹⁶ C.R.S. § 30-15-401.4(3.5)(a). This provision permits municipalities to require a background check before October 1, 2025, but not after.

¹⁷ C.R.S. § 30-15-401.4(3.5)(b)-(c).

¹⁸ C.R.S. § 30-15-401.4(4.5)(a)(II).

owner believes that they are not a threat to customers or other employees.¹⁹ This provision does not override any background check requirement; parties cannot be hired as an employee when they fail to submit a background check.²⁰

Massage Facility Exceptions

Massage facilities subject to the new law do not include amateur, college, or professional sports team training rooms, the offices or facilities of licensed medical professionals, medical facilities licensed by the state, facilities where barbers and licensed cosmetologists provide massage services to the public in the ordinary course of business, athletic clubs that do not provide massages to members or the public for remuneration, or athletic clubs that do not receive more than ten percent of gross income from providing massages to members of the public.²¹ Massage facilities also do not include places of business where a person offers to perform massage therapy for seventy-two hours or less in a six-month period, and as part of a public or charity event where the primary purpose is not to provide massage therapy.²² Finally, massage facilities do not include a place of business where a licensed massage therapist practices as a solo practitioner when they do not use a business or assumed name or use a business or assumed name but provide their full name or license in each advertisement and each time the assumed or business name appears in writing and do not maintain or operate a table shower.²³

Penalty

The bill does not provide specific penalties. We recommend adding in a penalty provision clarifying that owning, operating, or holding employment at a massage facility without an approved background check is both an offense subject to the Town’s general penalty provision and a public nuisance subject to abatement.

Ordinance

We have transmitted a draft ordinance with this memorandum identifying the Chief of Police and the Town Administrator as licensing authorities responsible for reviewing background checks submitted pursuant to this ordinance. The police department would also be responsible for transmitting fingerprints to the CBI if an applicant gets their fingerprints taken through the department. Otherwise, the third-party company conducting the fingerprinting will submit them to CBI.

As mentioned above, the ordinance must be effective and existing “covered parties” must have background check applications submitted by July 1, 2026. The Town’s ordinance must also

¹⁹ C.R.S. § 30-15-401.4(4.5)(c).

²⁰ C.R.S. § 30-15-401.4(4.5)(b).

²¹ C.R.S. § 30-15-401.4(7)(a)-(f).

²² C.R.S. § 30-15-401.4(7)(g)(I)-(II).

²³ C.R.S. § 30-15-401.4(7)(h)(I)-(III).

be reviewed and approved by the CBI and FBI. We have already sent the draft ordinance to the CBI for review. Once the CBI approves it, the CBI will forward it to the FBI for its review. We do not need to wait for final CBI and FBI approval to adopt the ordinance. Please reach out to our office with any questions.