

ORDINANCE NO: 2239

INTRODUCED BY: DAVIS, DOUGLAS, FORD, FRANK, GUARDIOLA, HURST, HUSEMAN, MADERA, TETER

AN ORDINANCE SUPPORTING THE PRACTICE OF MASSAGE THERAPY BY REPEALING AND REENACTING DIVISION 7 OF ARTICLE III OF CHAPTER 9 OF THE COMMERCE CITY REVISED MUNICIPAL CODE RELATING TO THE LICENSING AND REGULATION OF THE OPERATION OF MASSAGE FACILITIES

WHEREAS, the City of Commerce City, Colorado (“City”) is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution;

WHEREAS, by virtue of the Article XX, Section 6 of the Constitution of the State of Colorado and the Charter of the City of Commerce City, and state law, the City has broad authority to exercise its zoning and police powers to promote and protect the health, safety, and welfare of the community and its citizens, including with respect to the operation of businesses, nuisances, and the regulation of criminal activity within the City;

WHEREAS, C.R.S. §§ 12-35.5-101 *et seq.*, known as “The Massage Therapy Practice Act” (“Act”), regulates the practice and profession of massage therapy to provide for a consistent statewide certification and oversight;

WHEREAS, the Act does not prevent the City from regulating the operation of massage therapy businesses and their facilities and management and the City wishes to exercise its regulatory powers under its home rule authority;

WHEREAS, the City Council recognizes that massage is a legitimate health care professional activity that provides employment and therapeutic benefits to the residents of the City;

WHEREAS, the reputation and success of legitimate massage therapy businesses is denigrated and undermined by individuals who mask their unlawful sexual activities and human trafficking by falsely posing as massage therapy businesses;

WHEREAS, a 2018 report by Polaris indicated that over 9,000 illicit massage businesses operate in the United States and commercial sex websites report approximately ____ results within the City;

WHEREAS, the Polaris report identifies the following indicators that an illicit massage business is engaging in commercial sex and potentially human trafficking: prices significantly below market-level; employees requiring large tips; excessive work or on-call hours; use of the business facility as housing; locked, controlled, and discreet entrances; covered windows; and advertisement on commercial sex websites;

WHEREAS, the operation of illicit massage therapy businesses in the City, as opposed to the practice and profession of massage therapy regulated by the Act, without adequate safeguards can be dangerous to the public, including without limitation the potential for the conduct of

unlawful sexual activities, human trafficking, illegal building improvements, zoning violations, and nuisance activities;

WHEREAS, the City Council finds that the purpose and intent of this ordinance is to regulate the operation of massage therapy businesses and their facilities to protect legitimate massage therapy businesses and to safeguard and promote the public health, safety and welfare of the citizens of Commerce City;

WHEREAS, there are currently no massage facilities in the City that will be negatively affected by the repeal of the provisions of Article III, Division 9, Section 7 of the City Code (the "Code").

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. Chapter 9, Article III, Division 7 of the Revised Municipal Code of the City of Commerce City, Colorado, is hereby repealed and reenacted as set forth in Exhibit A.

SECTION 2. The City Council finds and declares that this ordinance is reasonable and necessary to protect the public health, safety, and welfare. The recitals to this ordinance are adopted as findings of fact.

SECTION 3. Except as specifically modified herein, the provisions of the Commerce City Revised Municipal Code shall remain unchanged and in full force and effect.

SECTION 4. Pursuant to Article XX of the State Constitution and the City Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies between the provisions of this Ordinance and such statutes. Any such inconsistency is intended by the City Council and shall be deemed made pursuant to the Charter.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS 7TH DAY OF OCTOBER 2019.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 4TH DAY OF NOVEMBER 2019.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST

Laura J. Bauer, MMC, City Clerk

Division 7. Massage Facility Licenses.

Section 9-3701. Purpose and intent.

The purpose and intent of this division is to license and regulate the operation of massage facilities in the city, to promote and protect the health, safety, and welfare of the public, and to reduce or eliminate the adverse effect on the community from unlawful conduct attributable to illegitimate massage facilities. The purpose and intent of this division is not to regulate the practice and profession of massage therapy. Nothing in this division shall be applied to interfere with the reasonable expectation of privacy of any client of a licensed massage facility or to interfere with any consensual activities not performed for compensation.

Section 9-3702. Definitions

The words and phrases used in this division shall have the meanings set forth in Section 9-1003 and in C.R.S. § 12-35.5-103, as amended, except as otherwise defined in this section.

Client means an individual who enters into an agreement, whether express or implied or written or unwritten, for massage therapy for a fee, income, or compensation of any kind within the city.

Employee means any person who performs any service at a massage facility on a full-time, part-time, or contract basis, whether or not the person is designated an employee, independent contractor or otherwise. Employee does not include a person exclusively engaged in the repair or maintenance of the massage facility or for the delivery of goods to the licensee.

Erotic Parlor means a facility that entices clients through advertising or other business practices directed toward sexual desires, lust or passions.

Massage facility means any facility or location where any massage therapy or full body massage is practiced or administered. The term “massage facility” does not include:

- (1) Training rooms of public and private schools accredited by the state board of education or approved by the state division charged with the responsibility of approving private occupational schools;
- (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;

- (5) Barber shops, beauty salons, and other facilities at which barbers and cosmetologists licensed by the state provide massage services to the public in the ordinary course of their professions;
- (6) Bona fide athletic clubs not engaged in the practice of providing massage services to their members or to the public for remuneration. If an athletic club does not receive more than 10 percent of its gross income providing massages to its members, or to the public, such shall be prima facie evidence of its status as a bona fide athletic club.
- (7) A facility where a person offers to perform or performs massage therapy:
 - a. For not more than 72 total hours in any six-month period; and
 - b. As part of a public or charity event, the primary purpose of which is not to provide massage therapy.
- (8) A facility used by a massage therapist practicing as a solo practitioner who:
 - a. Complies with all standards of conduct, facility requirements, and inspection requirements imposed by this division;
 - b. Does not use a business name or assumed name or, if a business named or assumed name is used, provides the massage therapist's full legal name and license number in each advertisement and each time the business name or assumed name appears in writing;
 - c. Does not advertise as an erotic parlor; and
 - d. Does not operate a table shower.
- (9) A facility that offers practices performed by persons who:
 - a. Do not claim expressly or implicitly to be massage therapists or to offer massage therapy;
 - b. Limit their work to one or more of the following recognized practices:
 - (i) Use of touch, words and directed movement to deepen awareness of existing patterns of movement and suggests new possibilities of movement (such practices include, but are not limited to the Feldenkrais method of somatic education, the "Rolf Institute's Rolf Movement Integration," the Trager approach to movement education, body-mind centering and ortho-bionomy);

- (ii) Use of minimal touch over specific points on the body to facilitate balance in the nervous system (such practices include, but are not limited to Bowenwork);
 - (iii) Use of touch to affect the energy systems, acupoints or qi meridians (channels of energy) of the human body (such practices include, but are not limited to acupressure, Asian bodywork therapy, biodynamic craniosacral therapy,” jin shin do body-mind acupressure, polarity, polarity therapy, and polarity therapy bodywork, qigong, reiki, shiatsu, and tuina);
 - (iv) Use of touch to effect change in the structure of the body while engaged in the practice of structural integration (such practices include, but are not limited to, practitioners of Rolfing structural integration, the Rolf method of structural integration, and Hellerwork); or
 - (v) Application of pressure to reflex points on the feet, hands and ears to bring the body into balance, thereby promoting the wellbeing of clients (such practices include, but are not limited to reflexology);
- c. If required for the practice, hold active certification or recognition by a professional organization or credentialing agency that:
- (i) Requires a minimum level of training specific to the discipline, demonstration of competence, and adherence to an approved scope of practice and ethical standards; and
 - (ii) Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and
- d. Provides consumers with contact information for any applicable professional organization or credentialing agency in the facility.

Manager is an individual authorized by the licensee to exercise overall operational control of the facility, to supervise employees, or to fulfill any of the functions required of a manager by this section. For purposes of this definition, *control* means the power to direct or cause the direction of the employees, the management and policies of a massage facility, or an applicant, licensee, or controlling person, in any way. *Manager* shall not include any person temporarily and intermittently supervising a massage facility in the absence of a manager.

Person means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee thereof.

Sexual act means sexual contact, sexual intrusion, or sexual penetration as defined in C.R.S. § 18-3-401.

Spa establishment means a commercial massage facility that offers or engages in personal services that call for the patron to disrobe, such as body wraps, hydro mineral wraps, body polish, body wash, baths, and hydro tub soak.

Table shower or *Vichy shower* means an apparatus for the bathing or massaging of a person on a table or tub.

Section 9-3703. License required; misdemeanor.

No person shall own or operate a massage facility, or allow a massage facility to be operated on his or her premises, within the city unless all required state and local licenses and a massage facility license issued in accordance with this division are effect. Any person convicted of violating this subdivision shall be guilty of a misdemeanor and shall be subject to the penalties set forth in this Code.

Section 9-3704. License conditions.

The following conditions shall apply to any license issued under this division in addition to any other conditions imposed by the licensing agent reasonably related to the furtherance of this division or by law. The failure to satisfy any such conditions constitutes grounds for denial, suspension, or revocation of the license or the imposition of any applicable penalty.

- (1) Each license issued under this division is separate and distinct. A separate license must be issued for each person and each geographic location. No person shall exercise any of the privileges granted under any license other than that which the person holds or for any licensee to allow any other person to exercise such privileges granted under the license.
- (2) A massage facility license shall be conspicuously displayed at all times on the licensed premises.
- (3) At all times a massage facility licensee shall possess and maintain possession of the premises for which the massage facility license is issued by ownership, lease, rental, or other arrangement for possession of the premises.
- (4) Each license issued under this division shall specify the date of issuance, the name of the licensee, and the address of premises for which the license was issued.
- (5) A massage facility licensee shall report each transfer or change of financial interest in the ownership of the massage facility to the licensing agent within 30 days of the transfer or change.

- (6) A massage facility licensee shall report any change in the managers of a massage facility to the licensing agent within 30 days of the change. Failure to report is ground for suspension or revocation of the license.
- (7) Any advertisement for a massage facility licensed under this division must list the address of the facility.
- (8) Each massage facility, manager, and person temporarily or intermittently serving as a manager of a massage facility shall comply with the requirements of this division, including without limitation the standards of conduct, facility requirements, and inspection requirements.
- (9) Each massage facility shall be in compliance with all applicable zoning, building, and fire prevention laws.
- (10) The requirements and prohibitions of this division shall be deemed conditions of every license issued under this division.

Section 9-3705. Prohibited licenses.

(a) No license under this division shall be issued to or held by:

- (1) A person under the age of 18 years;
- (2) Any person who has (a) 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 (b) have had a license to practice as a massage therapist, operate a massage facility, or similar license denied or revoked by the State of Colorado, a political subdivision of Colorado, or a regulatory board in another United States jurisdiction or possession for an act that occurred in that jurisdiction that would be a violation under this division;
- (3) Any person who is a registered sex offender or required by law to register as a sex offender;
- (4) Any person who has any prior conviction for an offense involving sexual misconduct with a child, including sexual abuse, sexual assault, sexual conduct, sexual molestation and sexual exploitation;
- (5) Subject to the requirements of C.R.S. § 24-5-101 *et seq.*, any person who has any prior convictions or pending criminal charges for any crimes, including but not limited to prostitution, or of operating a prostitution enterprise, theft, embezzlement, or money laundering;

- (6) A person who has had disciplinary actions taken against them, or any disciplinary action pending against them, by any state or local agency having authority to regulate the practice of massage therapy or massage facilities, whether the applicant is a massage therapist or not;
 - (7) A person who has a prior conviction for an offense involving a violation of a massage therapy practice act or any massage facility licensing law in any jurisdiction or possession of the United States;
 - (8) A person who was the manager of a location or facility, within or outside the city, where a license substantially similar to the massage facility license defined in this division was revoked or surrendered for cause within the preceding 24 months; or
 - (9) A person who has not completed all requirements of section C.R.S. § 12-35.5-107 and does not hold a valid state massage therapist license.
- (b) No massage facility license shall be issued or held for a location for which a similar license was revoked or surrendered for cause within the preceding 24 months.

Section 9-3706. Standards of conduct.

- (a) *Conduct within massage facility.* The licensee and all employees, managers, officers and agents shall adhere to the following standards of conduct within any massage facility:
- (1) No person shall operate or maintain a table shower or Vichy shower without a table shower permit issued by the licensing agent;
 - (2) No person shall use or provide a massage facility for housing or as living or sleeping quarters for any person;
 - (3) No person shall massage any client or give or administer any bath or baths, including table showers or Vichy showers, to a client in a massage facility in a manner intended to arouse, appeal to, or gratify the lust or passions, or sexual desires of such other person, or intentionally touch a client's genitalia;
 - (4) No person shall provide massage therapy or other massage services in a massage facility or be visible to clients in a massage facility without being clothed in professional attire consisting of fully opaque, nontransparent material that covers the employee's intimate parts and does not substantially expose the employee's undergarments;
 - (5) No person shall expose a client's genitalia as a part of any massage therapy;
 - (6) No person shall use adult-oriented merchandise, including sex toys, sexual aids, vaginal or anal lubricant, or any contraceptive item, in a massage facility;

- (7) No person shall engage in or agree to engage in any sexual act for compensation in a massage facility, whether through the use of touching, a physical implement, water, a table shower, or a Vichy shower;
 - (8) No person shall fail to report to the licensing agent any call for emergency services to respond to the massage facility involving any disorderly conduct, sexual acts, or other criminal activity occurring within a massage facility;
 - (9) No person shall commit any act within a massage facility that would constitute a violation of any part of Part 4 or Part 5 of Article 3 of the Colorado Criminal Code or agree to commit any such act;
 - (10) No person shall perform massage therapy in a massage facility who is not a massage therapist, except as allowed by state law.
 - (11) No person shall operate a massage facility between the hours of 10:00 p.m. and 5:00 a.m.
- (b) *Erotic parlors.* No person shall operate or advertise a massage facility as an erotic parlor.
- (c) *Advertisement.* No person shall place, publish or distribute, or cause to be placed, published or distributed, any misleading or false advertising that would reasonably suggest to the public or any prospective client that any service is available at a massage facility other than massage therapy.
- (d) *Identification.* All employees, contractors, and other persons, excluding clients, present in a massage facility must possess one of the following types of valid government identification at all times:
- (1) An operator's, chauffeur's, or similar type of driver's license issued by any state, any U.S. Territory, or any foreign country;
 - (2) An identification card issued by any state for the purpose of proof of age as in accordance with section 42-2-302 and 42-2-303 C.R.S.;
 - (3) A military identification card;
 - (4) A passport;
 - (5) An alien registration card;
 - (6) A valid employment authorization document issued by the U.S. Department of Homeland Security; or
 - (7) A valid consular identification card from any foreign country.

- (e) *Direction or influence.* No person shall direct, require, instruct, allow, or influence any person to perform any act or to agree to perform any act prohibited by this section.

Section 9-3707. Facility requirements.

- (a) *Records.* Each massage facility licensee shall maintain at the massage facility available for inspection by the city:
- (1) A list of current employees of that facility with start dates of employment or contracted service, full legal name, date of birth, home address and telephone number, employment position, date first began service and the date when services were terminated, if applicable;
 - (2) A copy of each current employee's massage therapy license;
 - (3) A photograph of each current employee;
 - (4) A log of all massage therapy services administered at the massage facility including the date, time and type of each massage therapy administered and the name of the employee administering the massage therapy. The log shall be retained for a minimum of one year following any massage therapy. Licensees operating a massage facility solely used by solo practitioners exempt from the licensing requirements of this division shall be exempt from this subsection (a)(4).
- (b) *Doors.* The interior and exterior doors of any massage facility shall remain unlocked while the massage facility is open, excluding bathrooms and changing rooms. Exterior doors may remain locked if only one employee is present or if the manager or any person serving temporarily or intermittently as manager of the massage facility believes there is a physical danger to persons present in the facility.
- (c) *Signage.* A recognizable and legible sign shall be posted at the main entrance of the massage facility identifying the establishment as a massage facility.
- (d) *Lighting.* A massage facility shall provide at least an artificial light of not less than forty (40) watts in each room or enclosure where massage services are performed, in addition to other lighting requirements of this code.
- (e) *Equipment.* A massage facility shall provide adequate equipment for disinfecting and sterilizing instruments used in performing acts of massage shall be provided.
- (f) *Water.* A massage facility shall provide hot and cold running water at all times.
- (g) *Dressing facilities.* A massage facility shall provide, at a minimum, adequate dressing facilities for clients, including, but not limited to, one (1) separate dressing room for each client present unless the dressing room is the same room to be used for the massage service;

- (h) *Storage facilities.* A massage facility shall provide secure storage facilities for patrons if at any time a patron consisting of: (1) for each client present, a separate locker which is capable of being locked under the control of the client; (2) for each client present, a bag, bin, or other portable container that will remain with the client for the duration of the massage service; or (3) no storage, if the patron will not leave the room during the massage service;
- (i) *Toilet facilities.* A minimum of one (1) toilet and one (1) wash basin shall be provided in each massage facility and shall be located within or as close as practicable to the area devoted to the performing of massage services. At all times, the toilet and basin shall provide soap or detergent, hot and cold running water, and sanitary towels in a permanently installed dispenser.
- (j) *Physical and sanitary conditions.* All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the massage facility must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the massage facility is in operation. Bathtubs shall be thoroughly cleaned after each use.
- (k) *Towels and linens.* Clean and sanitary towels and linens shall be provided for each person of the facility. Common use of towels and linens shall not be permitted.
- (l) *Table shower permit.*
 - (1) The operation or maintenance of any table shower or Vichy shower in a massage facility shall require a permit issued by the licensing agent. The licensing agent shall promulgate application forms, impose and collect fees, refer applications, and act on permits in the manner provided for licenses in article 1 of this chapter except as provided herein.
 - (2) A table permit may be issued if:
 - a. The table shower is commercial and professional in nature, manufactured with industrial grade materials, and is designed solely for the purpose of massage utilizing multiple overhead spray nozzles. Massage bathtubs and tables with accessory sprayers shall not qualify;
 - b. The massage facility where the shower is being installed is a bona fide high-end spa establishment offering, regularly conducting, and marketing a full range of spa services and treatments, to both male and female clients;
 - c. The massage facility practices appropriate draping of a client to include draping of the intimate parts of all clients, unless the client gives specific written consent to be undraped.

- d. The table shower is compliant with building and fire prevention laws of the city.

Section 9-3708. Right of entry and inspections; misdemeanor.

- (a) The licensee and the licensee's employees shall permit authorized representatives of the city (including the licensing agent, code enforcement officials, the building official, and police officers), health department, and fire department to inspect the massage facility for the purpose of ensuring compliance with this division, any license issued under this division, and other applicable law.
- (b) Inspections shall be conducted in a reasonable manner and only as frequently as may be reasonably necessary.
- (c) Inspections shall take place during the regular business hours of the massage facility or when any person is on the premises. All rooms, cabinets, storage areas shall be subject to inspection and any locked rooms, cabinets or storage areas shall be promptly opened for inspection. All records required to be maintained by this division shall be subject to inspection.
- (d) Upon request of a city inspector or law enforcement, all employees, contractors, and other persons, excluding clients, present in a massage facility must immediately present one of the types of valid government identification set forth in subsection 9-3705(d).
- (e) During an inspection, no person shall conceal persons in any massage facility, remain behind locked doors, refuse to provide identification to inspectors or law enforcement, or exit through side or back doors.
- (f) The massage therapy log shall be subject to inspection upon request by the inspector, during normal business hours in compliance with applicable law.
- (g) Any person convicted of violating any requirement of this subdivision shall be guilty of a misdemeanor and shall be subject to the penalties set forth in this Code.

Section 9-3709. Violations and penalties.

- (a) Unless specified in this division as a misdemeanor, a violation of any provision of this chapter shall constitute a civil infraction punishable as provided in chapter 1 of this Code that may be prosecuted in the municipal court or through the city's administrative hearing process. The city shall be required to only prove a violation by a preponderance of the evidence except where incarceration is a possible penalty, in which case the city shall be required to prove beyond a reasonable doubt that the violation occurred.
- (b) Notwithstanding any enforcement or conviction of any violation of this division as a civil or criminal infraction, the licensing agent may take any action regarding a license issued under this division based on the violation of any conditions of such license, including

without limitation compliance with the requirements and prohibitions of this division whether designated as a civil infraction or misdemeanor.

Section 9-3710. Summary suspension.

- (a) In addition to any other action involving a license provided in this chapter, if the licensing agent finds that probable cause exists for the suspension or revocation of massage facility license issued in accordance with this division as the result of conduct which constitutes a deliberate and willful violation of any part of this division that imposes an undue risk to the public health, safety, or welfare, he or she may enter an order for the immediate suspension of such license, pending further investigation and hearing, for a period not exceeding fifteen (15) days from the date of service.
- (b) Such order shall be in writing, citing the reasons for such suspension, and, notwithstanding Section 9-1009, shall be served upon the licensee, the manager, or any person temporarily or intermittently serving as manager of a massage facility at the time of service forthwith upon its execution, together with a notice to appear before the licensing agent for a hearing to show cause why the license should not be suspended or revoked. The order and notice shall also be mailed to the licensee to the post office address given in the application for the license.
- (c) Upon the service of such order and notice, without regard to the receipt of the order and notice by mailing), the massage facility subject to the order shall immediately cease operations.
- (d) Hearings on all orders issued pursuant to this section shall take place no later than fifteen (15) days following the date upon which such order is served and shall be conducted and heard by the city's administrative hearing officer in the manner provided in Section 9-1009(b)(2)(b-d).
- (e) Decisions of the city's administrative hearing officer shall be appealable in the manner provided in Section 9-1010(b).