

EFFECTIVE DATE: 6-23-18

ORDINANCE NO. 2018- 13

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REPEALING AND REENACTING CHAPTER 86 ARTICLE V DIVISION 3 OF THE CITY CODE REFERRED TO AS THE "MASSAGE FACILITY LICENSING CODE."

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

WHEREAS, Section 12-35.5-101 (3), C.R.S., known as "The Massage Therapy Practice Act" ("the Act") regulates the profession of massage therapy to provide for a consistent statewide certification and oversight of massage therapy professionals; and

WHEREAS, the Act does not prevent the City from regulating the massage therapy business, and the City wishes to exercise its regulatory powers under the home rule authority granted by the Colorado Constitution, recognizing that the practice of massage therapy in businesses across the City without sufficient standards can be dangerous to the public; and

WHEREAS, the City Council finds that the purpose and intent of this section is to regulate and protect legitimate massage therapy businesses in order to also safeguard and promote the public health, safety and welfare of the Citizens of Aurora, while recognizing that, massage is a legitimate health care professional activity that provides benefits to the residents of the City; and

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; and

WHEREAS, there are currently no massage parlors in the City that will be affected by the repeal of the provisions of Article V, Division 3, Section 86 of the City Code (the "Code").

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO THAT:

Section 1. Chapter 86, Article V, Division 3 of the City Code of the City of Aurora, Colorado, is hereby repealed and reenacted to read as follows:

Division 3. Massage Facility License.

Section 86-436. Definitions

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

Agent means an individual designated by a publicly-held corporation to act on behalf of the corporation under this article. An agent shall be a bona fide resident of Colorado, a citizen or legal resident of the United States, or otherwise authorized to work in the United States.

Applicant means an individual acting on behalf of a massage facility to apply for a license.

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

Control means the power to direct or cause the direction of the management and policies of an applicant, licensee or controlling person, in any way.

Controlling Person means a person directly or indirectly possessing control of an applicant or licensee.

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 place of business where any massage therapy or full body massage is practiced or administered. The term "massage facility" shall 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; for purposes of this definition, 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 place of business where a person offers to perform or performs massage therapy:

(a) For not more than 72 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 place of business where a licensed massage therapist practices as a solo practitioner, and complies with all required acts and limitations of operation of this section and;

(a) Does not use a business name or assumed name; or

(b) Uses a business name or an assumed name and provides the massage therapist's full legal name, or license number in each advertisement, and each time the business name or assumed name appears in writing; and

(c) Does not maintain or operate a table shower as defined in this section.

(9) A place of business which limits its business to offering the following practices performed by persons who:

(a) Do not claim expressly or implicitly to be massage therapists; and

(b) Limit their work to one or more of the following practices:

(i) Use touch, words and directed movement to deepen awareness of existing patterns of movement, and suggest 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; or use minimal touch over specific points on the body to facilitate balance in the nervous system. Such practices include, but are not limited to Bowenwork; or

(ii) Use 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; or

(iii) Use 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

(iv) Apply 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; and

(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) Provide consumers with contact information for the organization or agency in the practitioner’s place of business.

(e) The Director may promulgate additional rules or find that a practice is no longer exempt subject to Section 86-448.

Massage or Massage Therapy means a system of structured touch, palpation, or movement of the soft tissue of another person's body in order to enhance or restore the general health and well-being of the recipient. Such system includes, but is not limited to, techniques such as effleurage, commonly called stroking or gliding; petrissage, commonly called kneading; tapotement or percussion; friction; vibration; compression; passive and active stretching within the normal anatomical range of movement; hydro massage; and thermal massage. Such techniques may be applied with or without the aid of lubricants,

salt or herbal preparations, water, heat, or a massage device that mimics or enhances the actions possible by human hands.

Manager is an individual authorized by the licensee to exercise overall operational control of the business, to supervise employees, or to fulfill any of the functions required of a manager by this section.

Massage Therapist is an individual that has fulfilled the requirements for state licensure under Section 12-35.5-107, C.R.S., and has a valid massage therapist license issued by the state of Colorado to engage in the practice of massage therapy.

Mobile Massage Unit means a vehicle or other movable enclosure specifically equipped for a massage therapist to provide massage therapy inside the vehicle or enclosure.

Person shall have the meaning as defined in Section 86-26.

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

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 86-437. Licenses generally; minimum requirements.

The licenses required by this article are in addition to any other applicable licenses or permits required by the city code, county or state. Massage facilities licensed under this article shall comply with all other applicable ordinances and laws, including the city zoning ordinances.

Section 86-438. License required;

- (a) No person shall be permitted to operate a massage facility in the city without a valid massage facility license; and
- (b) No person shall be permitted to work as a manager of a massage facility without a massage facility manager's license.

Section 86-439. Application.

(a) In addition to the requirements of section 86-29, each application for a massage facility license shall contain the following information:

(1) If the applicant is an individual; satisfactory proof that he or she is 18 years of age or older.

(2) If the applicant is a legal entity; satisfactory proof that each of the individual officers, directors, managers, partners, members, principal owners, and/or anyone with 10 percent or more financial interest of such entity are 18 years or older.

(3) Whether the applicant, or any of the other individuals required to be listed in the application, have been convicted, or pled "nolo contendere", of a felony or misdemeanor, in any Federal, State or Municipal court in any of the United States jurisdictions or possessions, for prostitution, solicitation of prostitution, fraud, theft, embezzlement, money laundering or similar crimes. Failure to disclose any criminal conviction may result in denial of the license application.

(4) Whether the applicant, or any of the other individuals required to be listed in the application, has had a previous license under this or any other similar massage facility ordinance from another jurisdiction or possession of the United States, denied, suspended, or revoked, and, if so, the name and location of the massage facility for which such license was denied, suspended, or revoked, as well as the date of such denial, suspension, or revocation.

(5) Whether the applicant, or any of the other individuals required to be listed in the application, has been an officer, director, manager, partner, member, and/or principal owner of any legal entity which currently or previously operates or operated a massage facility or business meeting the definition of massage facility in this article and the name, dates of operation and location of such business or businesses.

(6) Satisfactory proof of the applicant's ownership or right to possession of the premises wherein the massage facility will be operated. The applicant shall have a continuing obligation to provide, where applicable, subsequent evidence of the right to possession of the premises.

(b) The applicant shall submit an application for a manager's license on a form to be provided by the licensing administrator which shall contain the following information:

(1) If the applicant is an individual; satisfactory proof that he or she is 18 years of age or older.

(2) The applicant's name, address, date of birth, and telephone number. If the applicant is a licensed massage therapist, the state massage therapy license number.

(3) Whether the applicant or any of the other individuals required to be listed in the application meet the requirements specified in section 86-439 (a) and, if the applicant or any other person listed in the application have been involved in a criminal act as defined in Section 86-439, the date and place of conviction, and the disposition.

(4) Any disciplinary actions taken by any state or local massage therapy board or criminal convictions for violations of a massage therapy practice act in any jurisdiction or possession of the United States, and the result of such disciplinary actions, whether the applicant is a licensed massage therapist or not.

Section 86-440. Review by other departments.

(a) Prior to the issuance of any massage facility license or a massage facility manager's license, the corresponding application shall be submitted to the Police Department for review as provided in section 86-34. The Police Department shall provide information as to whether the applicant and each of the individuals required to be listed in the corresponding license application meet the requirements in section 86-439 (a). Such review shall be completed within 20 days after the license application is submitted.

(b) The Police Department shall only be required to provide the information specified in subsection (a) of this section and shall not be authorized to approve or disapprove any license application.

Section 86-441. Issuance; denial.

(a) If after an investigation, the licensing administrator finds, in addition to the findings required by section 86-35, that the individual applicant, and each of the individuals required to be listed in the corresponding license application meet the requirements in section 86-439 (a):

(1) Are 18 years of age or older; and

(2) Shall not; (a) have 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 or operate a massage facility or similar license, denied or revoked by the State of Colorado or 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 article; and

- (3) Shall not be a registered sex offender or required by law to register as a sex offender; and
 - (4) Shall not have any prior conviction for an offense involving sexual misconduct with a child, including sexual abuse, sexual assault, sexual conduct, sexual molestation and sexual exploitation; and
 - (5) Subject to the requirements of Section 24-5-101 C.R.S., shall not have any prior convictions or pending violations for any crimes, including but not limited to prostitution, or of operating a prostitution enterprise, theft, embezzlement, or money laundering; and
 - (6) The location where the license is applied for has not had a similar license revoked or surrendered for cause within the last 24 months; and
 - (7) The character, record, or reputation of the applicant, his or her agent, or his or her principal is such that potential violation of this division may occur if a license is issued to the applicant.
- (b) Then he or she shall, within 30 days following receipt of the license application, approve the issuance of massage facility license to the applicant for use at the location identified in the license application as the situs of the business. In the event of a denial the licensing administrator shall explain with reasonable details in writing the reason for the denial.
- (c) The licensing administrator shall be empowered to place reasonable conditions and restrictions upon any massage facility license on a case by case basis. The licensee shall have the right to a hearing before the Finance Director to review any such conditions or restrictions in accordance with the provisions of section 86-55(a).
- (d) If, after investigation, the licensing administrator finds, in addition to the findings required by section 86-35, that:
- (1) The applicant meets all the requirements of subsection (a) of this section.
 - (2) The applicant has completed all requirements of section 12-35.5-107, C.R.S., and holds a valid state massage therapist license.
- (e) Then he or she shall, within 30 days following receipt of the license application, issue a manager's license to the applicant.

Section 86-442. Temporary license.

- (a) The licensing administrator may issue a temporary massage facility license upon receipt of a complete massage facility license application involving the sale or change in ownership of a business. Such license shall be issued for 30 days, and renewed every 30 days until approval or denial of the massage facility license.
- (b) The licensing administrator may issue a temporary massage facility manager license upon receipt of a complete massage manager license application upon sale, change of ownership, or change of manager of an existing licensed massage facility. Such license shall be issued for 30 days and renewed every 30 days until approval or denial of the massage facility manager license.

Section 86-443. Limitations on operation.

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

- (a) To operate a massage facility without a valid massage facility license or with a license that has been suspended, revoked, or expired.
- (b) To employ any person to act as a manager at a massage facility who is not licensed as a manager or a licensed owner as required by this division.
- (c) To be open for business for the practice of massage therapy without a massage therapist on the premises that has been licensed in accordance with section 12-35.5-107, C.R.S.
- (d) To operate or maintain a table shower or Vichy shower on the premises without a table shower permit issued by the licensing administrator.
- (e) To permit a licensed massage facility to be used for housing, sheltering, or harboring any person(s), or as living or sleeping quarters for any person(s). The owner and family members of a massage facility operated as a home occupation, as defined by section 146-2001, are exempt from this prohibition.
- (f) To massage any other person, or give or administer any bath or baths, including table showers or Vichy showers, in a manner intended to arouse, appeal to, or gratify the lust or passions, or sexual desires of such other person. In no case shall the employee intentionally touch either the male or female genitalia of the client.
- (g) To allow any employee to provide massage therapy or other massage services without being fully clothed. For purposes of this subsection,

clothing shall be of a fully opaque, nontransparent material that shall not expose the employee's genitalia or substantially expose the employee's undergarments."

(h) To require client nudity as part of any massage service without the client's prior consent.

(i) To place, publish or distribute, or cause to be placed, published or distributed, any misleading or false advertising that would reasonably suggest to prospective clients that any service is available other than those services described in this Division, nor shall any massage facility employ language in the text of any advertising that would reasonably suggest to a prospective client that any service is available other than those services described in this Division.

(j) Use or possession of adult-oriented merchandise, including sex toys, sexual aids, vaginal or anal lubricant, or any contraceptive item, in any part of a massage facility.

(k) To permit any individual, including a client, student, contractor, or employee, to engage in any sexual act in the massage facility.

(l) To fail to immediately report to the Aurora Police Department any disorderly conduct, sexual acts, or other criminal activity occurring on or within the licensed premises.

(m) Permitting any person to make an agreement with an employee to engage in sexual activity in any other place in violation of Section 94-216.

(n) Concealing persons in the facility, or refusing to provide identification to inspectors or law enforcement, or eluding inspectors by exiting side or back doors or remaining behind locked doors in the facility during an inspection.

(o) To permit anyone to perform massage therapy without a valid massage therapists license issued under section 12-35.5-107, C.R.S.

(p) To operate between the hours of 10:00 p.m. and 5:00 a.m.

(q) To operate an erotic parlor within the City as defined in this Division.

Section 86-444. Required Acts.

Every licensed massage facility shall be required to:

(a) Maintain a list of employees and contractors on site for the current 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.

(b) Maintain a copy of each massage therapists Colorado license for each employee and contractor performing massages.

(c) Each licensee shall keep a complete set of records to include a log of all massage therapy administered at the facility. The log shall contain the following information: date, time and type of each massage therapy administered, and name of the employee administering the massage therapy. The log shall be retained for a minimum of one year following any massage therapy. The massage therapy log shall be subject to inspection upon request by the inspector, during normal business hours in compliance with applicable law.

(d) Operate under or conduct business under only the designation specified in the license.

(e) All employees, contractors, and other persons, excluding clients, present in the massage facility must have valid government identification, and must immediately present such identification upon request of an inspector or law enforcement:

(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 including Canada and Mexico; or

(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.; or

(3) A military identification card; or

(4) A passport; or

(5) An alien registration card; or

(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.

(f) Massage therapists shall remain fully clothed in professional attire while administering massage or otherwise visible to clients on business premises, including premises designated by the client through an outcall massage service.

(g) Massage facilities interior and exterior doors shall remain unlocked while the massage facility is open. Exterior doors may remain locked if the massage facility is owned by one individual with no more than one employee or independent contractor.

(h) List the address of the facility in any advertisement.

(i) Upon the sale or transfer of any interest in a massage facility, the license issued pursuant to the chapter shall be null and void, and a new application shall be required.

Section 86-445. Inspections.

(a) No owner, manager, massage therapist, or employee shall fail to immediately grant full massage facility access any time such establishment is occupied or open for business, to a licensing administrator, or any other person authorized or required by law to inspect the massage facility.

(b) All rooms, cabinets, storage areas shall be subject to inspection and any locked rooms, cabinets or storage areas shall be promptly opened for inspection.

(c) Each massage facility shall keep a complete book of records to include a log of all massage therapy administered at the facility as required in Section 86-444 (c) open to inspection without unreasonable delay.

(d) Inspectors may request to review the massage therapist license issued by the State at any time during an inspection for the massage therapists, managers, or massage therapist employed as contractors.

(e) All owners, managers, massage therapists, employees, contractors or persons occupying the facility other than clients shall present identification and shall not elude identification.

Section 86-446. Table shower permit.

(a) Operating or maintaining of a table shower on or about the licensed premises shall require a permit.

(b) The licensing administrator may issue a permit if the following conditions are met:

(1) 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; and

(2) The 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; and

(3) The facility practices appropriate draping of a client to include draping of the buttocks and genitalia of all clients, unless the client gives specific written consent to be undraped.

(c) If the licensing administrator has reason to believe that there is a failure to comply with the conditions in subsection (b) of this section, the licensing administrator shall provide licensee with written notice that the table shower permit is terminated and the business shall not be allowed to operate a table shower.

(d) The licensee may appeal the termination or denial of a table shower permit in accordance with section 86-55.

Section 86-447. Revocation or suspension of license.

(a) In addition to any reason set forth in section 86-47, and notwithstanding any provision of this chapter to the contrary, the director may suspend or revoke a massage facility license if he or she finds that the licensee has violated any of the following:

(1) The licensee has committed a violation of any sections of this division 3;
or

(2) It is found that the qualifications of the owner or manager utilized to obtain a massage therapist license under section 12-35.5-107, C.R.S. were likely obtained through fraud, deceit or misrepresentation, and the state has revoked the massage therapy license of the licensee.

(b) The director may also summarily suspend a massage facility license with a hearing to be scheduled within 15 days when the director finds that:

(1) The licensee willfully failed to disclose any information as required in section 86-441; or

(2) The licensee knowingly permitting a person to perform massage therapy when licensee should reasonably know that such person is not licensed in accordance with section 12-35.5-107, C.R.S., et. seq. when such license is required; or

(3) A pattern of credible facts emerges that the facility is attempting to operate an erotic parlor or prostitution enterprise whether or not there is a violation of any other specific law, rule, or code; or

(4) The licensee failed to permit an inspection in accordance with section 86-445 any time the facility is occupied or open for business.

(c) The licensee may appeal the revocation or suspension of a license in accordance with section 86-55.

Section 86-448. Supplemental provisions.

The director may promulgate rules for:

(a) Approving professional organizations or credentialing agencies; and

(b) Verifying exempt status of individuals, in keeping with the intent of this division; and

(c) Exempting additional practices from the requirements of this ordinance; and

(d) If there is a continued pattern of criminal behavior regarding sexual misconduct, or criminal intent that is related to human trafficking disguised as a legitimate exemption, the finance director may, at his or her discretion, determine that a practice is no longer exempt.

Section 86-449. Fees.

The application and annual license fees shall be established by the director in accordance with the provisions of section 2-587.

Section 2. All ordinances, or parts of ordinances, of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 3. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title. Copies of this ordinance are available at the office of the city clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this 7th day of
May, 2018.

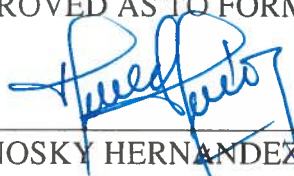
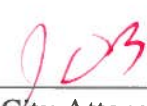
PASSED AND ORDERED PUBLISHED BY REFERENCE this 21st day of
May, 2018.


STEPHEN D. HOGAN, Mayor

ATTEST:


LINDA S. BLACKSTON, City Clerk

APPROVED AS TO FORM

 
HANOSKY HERNANDEZ, Asst. City Attorney