

City Council Meeting Minutes

Virtual Meeting
CITY OF WHEAT RIDGE, COLORADO
7500 WEST 29TH AVENUE, MUNICIPAL BUILDING

August 24, 2020

Note: This meeting was held virtually, using Zoom video-teleconferencing technology. As duly announced and publicly noticed, Council previously approved this format in order to continue with normal business and respond to the CoVid-19 Pandemic and the related public emergency orders promulgated by the President of the United States, the Governor of Colorado, and the Wheat Ridge City Council. Before calling the meeting to order, Mayor Starker stated the rules and procedures necessitated by this meeting format.

Mayor Starker called the Regular City Council Meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

ROLL CALL OF MEMBERS

Janeece Hoppe Judy Hutchinson Zachary Urban Rachel Hultin
Amanda Weaver Korey Stites Leah Dozeman Valerie Nosler Beck

Also present: City Clerk, Steve Kirkpatrick; City Attorney, Gerald Dahl; City Manager, Patrick Goff; City Treasurer, Chris Miller; Administrative Services Director, Allison Scheck; Community Development Director Ken Johnstone, other staff, guests and interested citizens.

PROCLAMATIONS AND CEREMONIES – None for this session.

APPROVAL OF MINUTES

Without objection or corrections, the City Council Minutes of August 10, 2020 and Study Session Notes for August 3, 2020 were approved as published.

APPROVAL OF AGENDA

Without objection or correction, the agenda stood as announced.

CITIZENS' RIGHT TO SPEAK

This item began at 7:02 PM.
No citizens came forward to speak.

Note about Wheat Ridge Speaks:

Citizens may visit the Wheat Ridge Speaks website and enter written comments of up to 1,000 words on any Council agenda item. *The deadline for citizens to*

submit comments is 12:00 Noon Mountain Time on the day of a Council session so that Council members, other elected officials and City Staff have time to review the comments before the meeting on Monday evening.

The City Clerk's Office transcribes those Wheat Ridge Speaks comments into these minutes, placing each comment along with the record for that agenda item, including items that include a public hearing (verbatim, if the comments do not contain lascivious language or unlawful hate speech).

The following comments appeared in Wheat Ridge Speaks for this Council Meeting:

Agenda Item 2 – Noise Ordinance

Thank you for listening to the needs and opinions of the residents of Wheat Ridge. You are our voice.

The noise ordinance is rapidly becoming an essential safeguard in maintaining a compatible relationship between businesses and residents. Businesses need to conduct business in a manner that attracts customers, but this cannot be at the expense of the residents who proudly call Wheat Ridge home. I strongly feel that having the ability to host 6 special events annually is a good step in establishing this balance. It gives a business the opportunity to promote themselves while giving residents the right to determine their own listening choice and noise level most of the year. With a limit of 6 permits, residents are insured that the "noise" impacting their homes is truly a temporary situation, making it much easier to endure. Again, thank you for representing the people who truly do make this community home!

08/21/2020 2:56 pm

Shelley Pierce
9745 W 43rd Ave.
Wheat Ridge, 80033

Thank you for your action to save the peace & tranquility of our neighborhoods. Amending the noise ordinance will clarify the law & better enable enforcement. In particular, the Amplified Sound Event permit should be very effective. A maximum of 6 events per year may be stressful to a neighborhood but, with the proper notification & regulation required by the permit process, I believe it is do-able. Any more than 6 would be detrimental to the neighborhood and belie the concept of "special use".

Again, thank you for your attention to our concerns.

08/22/2020 5:12 pm

Kathryn Jean Emmack
4310 Iris Street
Wheat Ridge, 80033

As a Wheat Ridge homeowner and city resident for 45 years, I wish to thank the city council for addressing the consistent use of unreasonable noise in our residential neighborhoods.

We are grateful for the carefully considered approach you have constructed and are encouraged that finally, after 9 years, we have a potential solution to unwanted noise!

We support the 6 permits per year for the outdoor amplified sound event section of the proposed ordinance. This gives a business multiple day- long events through the year while the affected neighborhoods recognize that these events are exempt from the audible noise 50 feet from the property line and the noise being heard within their homes.

Any more than 6 permits per year negates the whole concept that these are events and not a business model. The enactment of the ordinance on Sept. 11 would allow any business already engaged in outdoor amplified sound events to use these 6 event permits to finish out the 2020

calendar year, thus not disrupting their business. In our city, with two commercial cross streets adjoining residential neighborhoods on both sides, this ordinance is much needed throughout the city and will be much appreciated by the residents living in these neighborhoods. The specifics outlined in this proposed ordinance will also be much clearer to any establishment wishing to engage in outside noise and much easier to comply with.

As you look to discuss and adopt the proposed noise ordinance, please do remember that stable neighborhoods matter and that responsible homeownership matters. The City of Wheat Ridge should remain a desirable place to live. We have invested in our homes and we value our neighborhood.

Please support us; please support the noise ordinance as written.

Sincerely, Moe Keller 4325 Iris St. Wheat Ridge
08/23/2020 1:22 pm

Moe Keller
4325 Iris St.
Wheat Ridge, 80033

Council:

My name is Mike Holt and I live at 4365 Iris St. My house is the most severely impacted by the noise of outdoor music at T-Bird Roadhouse. During the time the bands play, I cannot even watch TV in my living room, as the band noise is louder than the volume of my TV set.

Over the years, I engaged, along with a neighbor, in a mediation plan arranged for us by the former police chief. This plan was violated by the previous business owner and never was enforceable.

Now, with the proposed noise ordinance revisions, we have a possible solution that can give relief to me and my neighbors. Please support the limit of 6 amplified sound event permits per year. This will bring some relief to me as I try to enjoy my home.

Mike Hult

(Relayed to Moe and Steve Keller by Mike Hult; submitted with his permission.)
08/23/2020 2:22 pm

Mike Hult
4365 Iris St.
Wheat Ridge, 80033

We five households on the 4300 block of W. 44th Ave. and the adjacent portion of W. 43rd Ave. We appreciate the time and attention that the Mayor, City Council, and City Manager have given to the proposed revision of the city's noise ordinance. As you are aware from our recent emails and public comments, we are working with the city government to improve the ordinance so that Wheat Ridge neighborhoods can be better protected against the stress and aggravation of regular and frequent periods of excessive noise. We are aware from living near 44th Ave. that businesses at one time or another may generate excessive noise, and we realize that this goes along with being adjacent to a commercial street.

Occasional noise is one thing, but an ongoing business model of frequent noise disturbance extending into a residential neighborhood is something else. This is the situation our neighborhood has struggled with this summer. We residential homeowners do not hassle, inconvenience, or cause stress to nearby businesses, and we believe that nearby business owners should show us the same consideration. Commercial enterprises, like private citizens, should act with respect toward their neighbors. A business model of outdoor amplified sound events twice per weekend over a period of several months degrades the quality of life in the adjacent residential neighborhood, makes the area less attractive to live in, and may decrease local property values. That model is what we are living with now.

We respectfully request that the proposed revision to the noise ordinance allow six and no more than six outdoor amplified sound events per year for a given business. We believe that this type of special use permit arrangement would be fair both to businesses and to adjacent homeowners. Neighborhoods bind

Wheat Ridge together – please show them your support.

Best regards,

Steve Keller

4325 Iris St.

08/23/2020 2:24 pm

Stephen M. Keller

4325 Iris St.

Wheat Ridge, 80033

End of comments entered in Wheat Ridge Speaks for this Council session.

1. CONSENT AGENDA

Discussion began at approximately 7:05 PM

Councilmember Hultin introduced the consent agenda items.

- a. Resolution No. 42-2020 - a resolution amending the fiscal year 2020 General Fund budget to reflect the approval of a supplemental budget appropriation in the amount of \$731,571 for the purpose of accepting the CARES Act local government distribution from Jefferson County
- b. Resolution No. 43-2020 - a resolution amending the 2020 fiscal year General Fund budget to reflect the approval of a supplemental budget appropriation for the purpose of accepting a grant from the Bureau of Justice Assistance Coronavirus Emergency Supplemental Funding Program in the amount of \$33,637.

These Resolutions comply with Charter and Code in order to accept and expend these funds.

Motion by Councilmember Hultin to approve both Consent Agenda Items a.), and b.), seconded by Councilmember Urban; motion carried 8-0.

PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

Discussion began at approximately 7:12 PM

2. Council Bill No. 17-2020 - An Ordinance amending Section 16-103 of the Wheat Ridge Code of Laws, concerning regulation of noise

Councilmember Hoppe introduced Council Bill 17-2020.

The current Wheat Ridge Code of Laws concerning unreasonable noise is qualitative in nature and is limited in scope and difficult to prove in court because it does not set an objective level by which to measure noise. This Ordinance will amend Section 16-103 of

the Wheat Ridge Code of Laws to apply a numeric decibel standard to enforce noise complaints emanating from industrial zoned districts within the City, maintain a reasonableness standard for noise complaints in all other zone districts within the City at a distance of 50 feet or more, create a special permit program for amplified sound at events on private property, set date and time limits and to provide a limited number of exemptions.

Mayor Starker opened the public hearing.

The Mayor reviewed the procedures. No citizens appeared in chambers to address this issue. There were who wanted to speak through the Zoom format.

City Clerk Steve Kirkpatrick assigned Ordinance No. 1697

City Manager Mr. Goff presented to the Council a review discussions during previous council meetings that have addressed this issue. The following consensus items were reviewed:

1. Create a hybrid approach for a noise ordinance (i.e. set decibel level limits for industrial zoned districts and use a reasonableness standard for all other zone districts)
2. Unreasonable noise is prohibited especially between the hours of 10 p.m. and 7 a.m.
3. Create a permit process for public events (live outside amplified music on patios, etc.) and special events (Carnation Festival, etc.) outside of the hours 10 p.m. to 7 a.m.
4. Any unreasonable noise 50' or more from noise source is prohibited
5. Provide exemptions for construction, fireworks, loading operations, homeowner activities, road improvements and fire and police

Public Comment

Ms. Moe Keller, 4325 Iris, Wheat Ridge and her husband, Steve Keller, came to thank Council for its hard work on this noise ordinance. The Kellers support the limit of 6 permits for special event per year permit for businesses. She noted that the new ordinance will improve the quality of life for all residents of the City, and make it easier for businesses to understand the noise limits and obey the ordinance. Their neighbors in nearby homes for several blocks support this new ordinance, and we will continue to work with the City and businesses to continue to improve this ordinance and its implementation. Commercial enterprises, like private citizens, should be good citizens and residents. At present, the noise is damaging our quality of life and real estate values.

Dan Larson, 4799 Flower St. called to request an amendment to the proposed ordinance to limit the noise from vehicle mufflers, or the absence of a muffler, on

vehicles. His home is near I-70, and he often hears loud, unmuffled vehicle engines. He read proposed language for his desired amendment.

Council Questions and comments

Council asked whether our current code or the proposed ordinance specifically addressed muffler noise. Mr. Goff explained that while there is nothing specific in current or proposed ordinance, the new noise ordinance can address muffler noises from frequent violators as it is written. Mr. Dahl referred to the specific sections of the proposed ordinance that would address muffler/no muffler vehicle noise.

Council noted that the current language allows law enforcement to curtail or terminate an event for which a permit is issued. Mr. Dahl referred to proposed language that would allow the City to refuse to issue further permits for events at later dates if violators will not comply with the ordinance during a previous permitted event.

Council also asked whether the definition of the term real property in the proposed ordinance is sufficiently clear, especially when two or more businesses occupy premises on the same site. Language to clarify that was discussed.

Another definition in the language, occupied property, as it relates to block parties, and event permits for amplified sound at such events. The confusion arises from the words "private property," since block parties are on public property. Mr. Dahl suggested some potential changes or clarifications. It is also possible that a business like a bar or club could hold 6 permitted events and then hold block parties.

Mayor Starker closed the public hearing.

Motion by Councilmember Hoppe to approve Council Bill No. 17-2020 an ordinance amending Section 16-103 of the Wheat Ridge Code of Laws, concerning regulation of noise, on second reading, and that it takes effect 15 days after final publication, with changes from the published language. Seconded by Councilmember Urban.

To avoid any confusion, the final version of the Ordinance as passed appears in its entirety at the end of the minutes and by this reference is made a part hereof.

Councilmember Hoppe thanked Councilmembers Nosler Beck and Dozeman for their work with the bottling plant in NW Wheat Ridge and the residents of the adjacent neighborhood.

Councilmember Urban asked about the language that states "the decision of Council will be final, subject to judicial review." Mr. Dahl explained the reason for the language; it is commonplace. Councilmember Urban also asked about the ability to revoke a permit issued under the newly proposed language, and received the clarification he sought.

Councilmember Dozeman proposed a motion to amend the motion to add provision to address muffler noise. Councilmember Weaver seconded the motion.

Councilmember Urban expressed reservations about the language in the amendment. Councilmember Hoppe suggested that Council delay this amendment and bring it forward at a future meeting because if we do not pass the motion tonight we cannot consider it for the next six months.

Councilmember Hultin supported delaying action on muffler noise until a future study session can address it in detail.

Councilmember Dozeman withdrew her proposed amendment, and Councilmember Weaver revoked her second. The Amendment thus was postponed for consideration until brought to a future study session.

Councilmember Hoppe asked about clarification of the language in the added language to strike "property owner," and substitute "business owner." Change approved by Councilmember Hoppe and the seconder, Councilmember Urban, and included in the main motion without objection.

Councilmember Urban suggested clarifying language in terms of when the ordinance takes effect. Councilmember Hoppe replied that adding the new language in the section about industrial zones already addresses Councilmember Urban's concern. Councilmember Dozeman echoed

Motion carried 8-0.

To avoid any confusion, the final version of the Ordinance as passed appears in its entirety at the end of the minutes and by this reference is made a part hereof.

ORDINANCES ON FIRST READING

There were no new ordinances proposed for first reading.

DECISIONS, RESOLUTIONS AND MOTIONS

Discussion began at approximately 8:00 PM

3. Resolution No. 44-2020 – A Resolution approving an intergovernmental agreement concerning the establishment of a regional Homeless Navigator to support and assist those experiencing homelessness

Councilmember Weaver introduced the Resolution.

The City of Wheat Ridge is committed to regional homeless navigation efforts between Jefferson County and the cities therein to address the increasing number of individuals experiencing homelessness. In partnership with the cities of Golden and Edgewater, Wheat Ridge will staff or contract one full-time Homeless Navigator to share between the three cities.

Marianne Schilling, Assistant to the City Manager, was available for questions.

Public Comment: No one came forward to speak.

Council Questions

Council had no questions or comments, having reviewed this agreement in detail previously during Study Session.

Motion by Councilmember Weaver to approve Resolution 44- 2020, a resolution approving an intergovernmental agreement concerning the establishment of a regional Homeless Navigator to support and assist those experiencing homelessness, seconded by Councilmember Nosler Beck; motion carried 8-0

4. Motion to approve appointment to a City Council District IV vacancy on the Cultural Commission

Discussion began at approximately 7:57 PM

Councilmember Dozeman introduced the motion.

Due to the recent resignations of V. Ruth Baranowski and Jan Southcott, the City Council appointed two new District IV members on August 10, 2020 to the Cultural Commission. Afterwards, one applicant declined the appointment, and as such a seat in District IV Cultural Commission continues to remain vacant. The term of this position will expire on March 2, 2021.

Staff Presentation

It has been concluded by City Attorney Gerald Dahl, that the appointment was declined, and for that reason, "the original vacancy intended to be filled by that appointment was never filled and remains available for the Council to fill from the applicant pool available to it.

Public Comment

No one came forward to speak.

Council Questions – none.

Motion by Councilmember Dozeman, seconded by Councilmember Nosler Beck to appoint Megan Schneckenberger , to the Cultural Commission for District IV to fill a vacancy, term ending March 2, 2021, motion carried 8-0,

5. Reconsideration of ordinance 1696, series 2020, an ordinance repealing Chapter 16, Article X "Massage Parlors" and reenacting regulation of Massage Businesses by amending Chapter 11, "licenses, permits and miscellaneous business regulations" by the addition of a new article entitled "Massage Businesses" and making conforming amendments to Chapter 2 Article V "Administrative Enforcement" and Chapter 26 "Zoning And Development"

Discussion began at approximately 8:01 PM

Councilmember Urban introduced the reconsideration of ordinance 1696.

At its August 10 regular meeting, Council adopted Ordinance 1696, which extensively revised the system for the regulation and licensing of the practice of massage. The new article uses the more inclusive term “massage business,” rather than “massage parlor,” “massage therapist” or “massage therapy center.” The Ordinance also amended these terms in Code Chapter 26 in the various use charts and for definitional purposes. The Code requires Chapter 26 amendments to be reviewed by the Planning Commission for a recommendation; this was not accomplished for these few sections of Ordinance 1696. Since the Commission will be providing a recommendation on these sections on August 20, Council is asked to reconsider and readopt Ordinance 1696 to fulfill this requirement.

Presentation by City Attorney Gerald Dahl explained why Council needs to reconsider and re-approve this Ordinance following satisfaction of Code requirements that the language be approved by the City Planning Commission.

Mr. Dahl explained the small changes required to comply with Code.

He further explained the purpose and effect of a motion to reconsider the Ordinance passed on August 10th.

Public Comment: No one came forward to speak.

Council Questions

Council had no questions.

Motion by Councilmember Urban to **reconsider** Ordinance 1696, Series 2020, an ordinance repealing Chapter 16, Article X “Massage Parlors” and reenacting regulation of massage businesses by amending Chapter 11, “Licenses, Permits and Miscellaneous Business Regulations” by the addition of a new article entitled “Massage Businesses” and making conforming amendments to Chapter 2 Article V “Administrative Enforcement” and Chapter 26 “Zoning and Development, seconded by Councilmember Stites; motion carried 8-0.

Motion by Councilmember Urban to amend Section 7 of Ordinance 1696, Series 2020 to insert a new line in Code section 26-1111.B.1 identifying “massage business” as a permitted use in the mixed use districts under “Commercial Services and Retail,” and amend Section 11, effective date, to make the Ordinance effective upon readoption, and as amended, to readopt Ordinance 1696, Series of 2020, an ordinance repealing Chapter 16, Article X “Massage Parlors” and reenacting regulation of massage businesses by amending Chapter 11, “Licenses, Permits and Miscellaneous Business Regulations” by the addition of a new article entitled “Massage Businesses” and making conforming amendments to Chapter 2 Article V “Administrative Enforcement” and Chapter 26 “Zoning and Development,” order it published, and that it take effect

immediately upon readoption as permitted by Section 5.11 of the Charter, seconded by Councilmember Stites, motion carried 8-0.

To avoid any confusion, the final version of this Ordinance as passed also appears in its entirety at the end of the minutes and by this reference is made a part hereof.

CITY MANAGER'S MATTERS

Mr. Goff reported on assistance for renters and landlords from the Colorado Department of Local Affairs.

Jefferson County has reduced the numbers of CoVid cases, meeting the threshold for continuing the variance issued to the County by CDPHE.

September 10 there will be Jefferson Center virtual banquet event.

CITY ATTORNEY'S MATTERS

He thanked Council for their indulgence in reconsidering the massage ordinance.

ELECTED OFFICIALS' MATTERS

City Clerk Kirkpatrick thanked the staff for the ongoing commitment to the people of Wheat Ridge during the pandemic. He also urged all who encounter a Wheat Ridge Police Department member to thank them for their hard work on our behalf, often at risk to their own health and safety.

Councilmember Nosler Beck thanked those who applied for a seat on our Cultural Commission. She also thanked the teachers, students, administrators and others who are helping our children get back to school.

Councilmember Dozeman thanked the neighbors near the bottling plant for their participation in the process of creating, wording and passing the noise ordinance. She also wanted to welcome students back to school, and thanked everyone who is making so many adjustments to enable learning to begin.

Councilmember Stites also thanked everyone who is working to make the opening of the school year work. He also asked people to cut their weeds.

Councilmember Hultin thanked the many citizens who gave collaborative and thoughtful comments to create the new noise ordinance. She echoed other Councilmembers comments about the efforts so many are making as school reopens.

She reminded people that no fires, not even grills in backyards, are permitted at present due to fire danger.

Councilmember Urban thanked those who worked to get the massage business ordinance passed. He reported that 7 individuals have been indicted recently for human trafficking felonies.

Councilmember Hutchinson thanked those who worked on the noise ordinance. She also told a story about a citizen who is weeding planters along 38th Avenue. She has lived in that area for more than 50 years, and went to the Parks and Recreation Department to volunteer to weed the planters.

Councilmember Hoppe echoed the thanks to parents, teachers, first responders, and our police department for their work for the citizens. The noise ordinance is an excellent example of how people come together, work hard and emerge with a great result.

Mayor Starker thanked those who worked with Council and others to create good ordinances Council passed tonight. Please, keep social distancing, washing hands and wearing masks.

The next Council meeting is September 14th.

ADJOURNMENT

The meeting adjourned at 8:26 pm.



Steve Kirkpatrick, City Clerk

APPROVED BY CITY COUNCIL ON September 7, 2020



Janece Hoppe, Mayor Pro Tem

The preceding Minutes were prepared according to §47 of Robert's Rules of Order, i.e. they contain a record of what was *done* at the meeting, not what was *said* by the members. Recordings and DVD's of the meetings are available for listening or viewing by contacting the City Clerk's Office, as well as copies of Ordinances and Resolutions.

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER HOPPE

COUNCIL BILL NO. 17

ORDINANCE NO. 1697

Series 2020

**TITLE: AN ORDINANCE AMENDING SECTION 16-103 OF THE WHEAT RIDGE
CODE OF LAWS, CONCERNING REGULATION OF NOISE**

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-23-101, the City, acting through its City Council (the "Council"), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

WHEREAS, in the exercise of this authority the Council has previously enacted Section 16-103 of the Code of Laws, concerning regulation of noise; and

WHEREAS, following public outreach and after hearing the concerns of residents and the business community, the Council wishes to amend Section 16-103 to better address the manner in which noise is measured and unreasonable noise is prohibited and enforced.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT
RIDGE, COLORADO:**

Section 1. Section 16-103 is amended to read as follows:

Sec. 16-103. - Unreasonable noise; disturbing the peace:

(A) DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE MEANINGS INDICATED:

AMPLIFIED SOUND SHALL MEAN THE USE OR OPERATION OF ANY LOUDSPEAKER, PUBLIC ADDRESS SYSTEM, OR OTHER SOUND AMPLIFYING EQUIPMENT FOR THE PURPOSE OF GIVING INSTRUCTIONS, DIRECTIONS, TALKS, ADDRESSES OR LECTURES, OR FOR TRANSMITTING MUSIC OR SOUND TO ANY PERSONS OR ASSEMBLAGES OF PERSONS. AMPLIFIED SOUND SHALL NOT INCLUDE SOUND WHICH IS NOT AUDIBLE FIFTY (50) OR MORE FEET FROM THE PROPERTY LINE OF THE PROPERTY UPON WHICH THE SOUND SOURCE IS LOCATED.

SOUND-AMPLIFYING EQUIPMENT SHALL MEAN ANY MACHINE OR DEVICE FOR THE AMPLIFICATION OF A HUMAN VOICE, MUSIC OR ANY OTHER SOUND, OR BY WHICH THE HUMAN VOICE, MUSIC OR ANY OTHER SOUND IS AMPLIFIED.

UNREASONABLE NOISE SHALL MEAN ANY EXCESSIVE OR UNUSUALLY LOUD SOUND, OR ANY SOUND WHICH DISTURBS THE PEACE AND QUIET OF ANY NEIGHBORHOOD OR CAUSES DAMAGE TO ANY PROPERTY OR BUSINESS.

AMPLIFIED SOUND EVENT SHALL MEAN AN OUTDOOR EVENT ON PRIVATE PROPERTY AT WHICH AMPLIFIED SOUND IS PERMITTED PURSUANT TO THIS SECTION.

EVENT LOCATION SHALL MEAN THE REAL PROPERTY OWNED OR LEGALLY OCCUPIED BY THE PERMITTEE AT WHICH AN AMPLIFIED SOUND EVENT IS HELD, EXTENDING TO THE EXTERIOR PROPERTY LINES THEREOF. IN THE CASE OF A RESIDENTIAL NEIGHBORHOOD "BLOCK PARTY" OR SIMILAR FUNCTION, THE EVENT LOCATION SHALL BE THE PUBLIC STREET USED FOR THE EVENT.

(B) UNLAWFUL NOISE: RESIDENTIAL AND COMMERCIAL PROPERTIES:

It is unlawful for any person to make, continue or cause to be made or to permit or assist another to make, continue or cause to be made, any unreasonable noise which, under all of the circumstances presented, would annoy, injure or endanger the comfort, repose or peace of a person of ordinary sensitivities INCLUDING BUT NOT LIMITED TO THE FOLLOWING: THE SOUNDING OF ANY HORN, SIGNALING DEVICE, OR SIMILAR DEVICE ON ANY AUTOMOBILE, MOTORCYCLE OR OTHER VEHICLE; ANY AMPLIFIED SIGNAL FROM ANY BELL, CHIME, SIREN, WHISTLE OR SIMILAR DEVICE INTENDED FOR NONEMERGENCY PURPOSES; ANY SIGNALING DEVICE INCLUDING FIRE, BURGLAR, SIREN, WHISTLE UNLESS IN AN EMERGENCY; RADIOS, TELEVISIONS, BOOM BOXES, PHONOGRAPHS, STEREOS, MUSICAL INSTRUMENTS AND SIMILAR DEVICES.

The following FOREGOING noises and circumstances shall be deemed as prima facie unreasonable IF:

- (1) Any noise or sound which is audible ~~twenty-five (25)~~ FIFTY (50) or more feet from a mobile noise or sound source.
- (2) Any noise or sound which is audible within a private residence that the person responsible for the sound has no right to occupy, specifically including but not limited to apartments, common interest communities and other multiunit dwelling structures.
- (3) Any noise, sound source or any person or group of persons engaged in loud and continuing activities which are audible ~~twenty-five (25)~~ FIFTY (50) or more feet from the noise source or at the property line of the property upon which the noise source is located or upon which such activities are taking place, continuing for a minimum of fifteen (15) minutes IN A TWO (2) HOUR PERIOD.

(4) Any person performing or permitting the performance of trash pickup with a truck which has a compactor or the capacity to raise and dump dumpsters in any area zoned for residential uses between the hours of ~~11:00 p.m.~~ 10:00 p.m. and 7:00 a.m. For purposes of this paragraph, testimony that the name of a business which holds itself out as being in the business of trash hauling was written on the trash truck shall be prima facie evidence that the trash truck was owned by and under the control of the employer so identified.

(C) UNLAWFUL NOISE: INDUSTRIAL PROPERTIES.

IT SHALL BE UNLAWFUL FOR ANY PERSON TO EMIT OR CAUSE TO BE EMITTED ANY NOISE WHICH LEAVES THE PREMISES ON WHICH IT ORIGINATES, CROSSES A PROPERTY LINE, AND ENTERS ONTO ANY OTHER PREMISES IN EXCESS OF THE SOUND PRESSURE LEVELS DURING THE TIME PERIODS AS SPECIFIED IN TABLE A.

(1) THE NOISE SOURCE SHALL BE MEASURED AT ANY POINT ALONG THE PROPERTY LINE OR WITHIN THE PROPERTY LINE OF THE RECEIVING PREMISES TO DETERMINE COMPLIANCE WITH THIS SECTION.

(2) THE DECIBEL LEVEL OF ANY NOISE REGULATED ON A DECIBEL BASIS BY THIS ARTICLE SHALL BE MEASURED BY A SOUND LEVEL METER. THE TEST RESULTS SHALL BE PRIMA FACIE EVIDENCE IF ADMINISTERED IN CONFORMANCE WITH THE AMERICAN NATIONAL STANDARDS INSTITUTE. IN ORDER TO IMPLEMENT AND ENFORCE THIS ARTICLE EFFECTIVELY, THE CHIEF OF POLICE SHALL PROMULGATE STANDARDS AND PROCEDURES FOR USING AND TESTING SOUND LEVEL METERS USED IN THE ENFORCEMENT OF THIS ARTICLE.

TABLE A: ALLOWABLE NOISE LEVELS (IN DBA) WITH TIME OF DAY ALLOWANCE

	RECEPTOR PREMISES 7AM-10PM/10PM-7AM		
SOURCE PREMISES			
	RESIDENTIAL	COMMERCIAL	INDUSTRIAL
INDUSTRIAL	55/50	65/60	80/75

(3) NOTWITHSTANDING THE FORGOING, A BUSINESS OWNER IN AN INDUSTRIAL ZONE DISTRICT, UPON WHICH THERE EXISTS A NOISE SOURCE IN OPERATION AT THE TIME THIS SECTION 16-103(C) BECOMES EFFECTIVE, MAY APPLY TO THE CITY MANAGER FOR A PERMIT FOR A DIFFERENT DECIBEL LEVEL, REQUIREMENT, AND/OR TIME LIMITATION SPECIFIC TO SUCH REAL PROPERTY. SUCH REAL PROPERTY OWNER WILL SUBMIT THE FOLLOWING TO THE CITY MANAGER AS AN APPLICATION FOR SUCH PERMIT:

- a. A WRITTEN REQUEST FOR THE DECIBEL LEVEL, TIME AND DAY OF WEEK LIMITATIONS AND OTHER ELEMENTS OF THE PERMIT DESIRED.

- b. A NOISE STUDY PREPARED BY A LICENSED PROFESSIONAL ENGINEER SUPPORTING THE ABILITY OF THE APPLICANT TO COMPLY WITH THE PERMIT LEVELS AND CONDITIONS REQUESTED OR TO BE IMPOSED.
- c. ANY OTHER DOCUMENTS REQUIRED BY THE CITY MANAGER TO RENDER THE APPLICATION COMPLETE.

THE CITY MANAGER WILL REVIEW THE APPLICATION MATERIALS AND MEET WITH THE APPLICANT WITHIN 30 DAYS OF SUCH SUBMITTAL, AND SHALL RECOMMEND TO CITY COUNCIL APPROVAL, APPROVAL WITH CONDITIONS, OR DENIAL OF THE APPLICATION BY CITY COUNCIL. THE DECISION OF CITY COUNCIL SHALL BE THE FINAL DECISION OF THE CITY, SUBJECT TO JUDICIAL APPEAL. PERMIT CONDITIONS MAY INCLUDE, BUT ARE NOT LIMITED TO: PERMITTED DECIBEL LEVEL(S), TIME AND DAY OF WEEK LIMITATIONS, TERM OF PERMIT AND WHETHER RENEWAL PERIODS ARE PERMITTED, NEIGHBORHOOD OUTREACH AND EDUCATION, CONTACT FOR COMPLAINTS, AND AUTHORITY FOR THE CITY MANAGER TO REVOKE THE PERMIT FOR FAILURE TO COMPLY WITH LIMITATIONS AND CONDITIONS. IF THE CITY COUNCIL APPROVES THE PERMIT THE CITY MANAGER WILL ISSUE THE PERMIT.

(D) PERMIT FOR AMPLIFIED SOUND EVENT

NO PERSON SHALL USE OR CAUSE TO BE USED ANY LOUDSPEAKER, LOUDSPEAKER SYSTEM, SOUND AMPLIFIER OR ANY OTHER MACHINE OR DEVICE WHICH PRODUCES, REPRODUCES, OR AMPLIFIES SOUND OUTSIDE OF BUILDINGS OR OTHER ENCLOSED STRUCTURES IN A MANNER WHICH EXCEEDS THE LEVELS SPECIFIED IN SECTION 16-103(B), WITHOUT FIRST OBTAINING A PERMIT TO DO SO. AN OUTDOOR AMPLIFIED SOUND EVENT ON PRIVATE PROPERTY IS PERMITTED UNDER THIS SECTION UNDER THE FOLLOWING CONDITIONS:

- (1) THE EVENT SPONSOR MUST APPLY FOR AND RECEIVE AN ADMINISTRATIVE PERMIT FOR THE EVENT, ON FORMS PROVIDED BY THE CITY CLERK.
- (2) THE APPLICATION SHALL BE APPROVED, APPROVED WITH CONDITIONS, OR DENIED BY THE CITY MANAGER, AFTER REVIEW BY THE POLICE DEPARTMENT AND ANY OTHER CITY DEPARTMENT AS APPROPRIATE.
- (3) NO AMPLIFIED SOUND EVENT PERMIT MAY BE ISSUED FOR AN EVENT OUTSIDE OF THE HOURS OF 9:00 AM AND 9:00 PM SUNDAY THROUGH THURSDAY AND 9:00 AM AND 10:00 PM FRIDAY AND SATURDAY. WITHIN THIS TIME RANGE, AMPLIFIED SOUND EVENTS MAY BE LIMITED IN DURATION AS DETERMINED BY THE CITY MANAGER.
- (4) A PERMIT SHALL NOT BE ISSUED FOR THE SAME LOCATION MORE THAN SIX TIMES DURING ANY ONE-YEAR PERIOD.

- (5) THE PERMIT SHALL NOT AUTHORIZE, ALLOW, OR OTHERWISE PERMIT THE PRODUCTION, REPRODUCTION, OR AMPLIFICATION OF SOUND WHICH EXCEEDS SEVENTY-FIVE (75) DB (A) WHEN MEASURED FROM THE NEAREST RECEIVING PROPERTY.
 - (6) CONDITIONS MAY BE IMPOSED ON THE PERMIT TO ADDRESS THE NATURE AND LOCATION OF THE SPECIFIC EVENT. FAILURE OF THE PERMITTEE TO COMPLY WITH THE CONDITIONS MAY RESULT IN THE PERMIT BEING REVOKED.
 - (7) THE EVENT SPONSOR SHALL POST, AT THE EVENT LOCATION, AND DELIVER FLYERS TO ALL RESIDENCES AND BUSINESSES WITHIN A 300 FOOT RADIUS OF THE EXTERIOR PROPERTY LINE OF THE EVENT LOCATION, ADVISING THE SURROUNDING NEIGHBORHOOD OF THE DATE AND PERMITTED TIMES OF THE EVENT, NO LATER THAN SEVEN (7) DAYS BEFORE THE EVENT.
 - (8) THE POLICE DEPARTMENT SHALL HAVE AUTHORITY TO REQUIRE THE PERMITTEE TO REDUCE THE SOUND VOLUME, CURTAIL THE HOURS OF THE EVENT, OR CLOSE THE EVENT ENTIRELY, IF THE SOUND LEVEL AT THE EVENT, EVALUATED AT THE PROPERTY LINE OF THE COMPLAINING PARTY CONSTITUTES, IN THE POLICE DEPARTMENT'S SOUND JUDGMENT, UNREASONABLE NOISE.
 - (9) AN AMPLIFIED SOUND EVENT FOR WHICH A PERMIT HAS BEEN ISSUED SHALL BE EXEMPT FROM THE PROVISIONS OF (B)(1), (B)(2) AND (B)(3) OF THIS SECTION.
- (E) NOISE CAUSED IN THE PERFORMANCE OF EMERGENCY WORK FOR THE IMMEDIATE SAFETY, HEALTH, OR WELFARE OF THE COMMUNITY OR INDIVIDUALS OF THE COMMUNITY, OR TO RESTORE PROPERTY TO A SAFE CONDITION FOLLOWING A PUBLIC CALAMITY SHALL NOT BE SUBJECT TO THE PROVISIONS OF THIS SECTION.
- (F) Any member of the police department who personally observes a violation of this section may serve as the complaining party in the prosecution of such violation, regardless of whether the officer's observation was initiated by the complaint of another party.
- (G) Any activity or noise source conducted or caused by an activity conducted OR sponsored or approved by the city shall be exempt from the requirements of this section.

Section 2. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 3. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, with the exception of Subsection 16-103(c) concerning Unlawful Noise: Industrial Properties, which subsection shall take effect on February 28, 2021, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 10th day of August, 2020, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for August 24, 2020 at 7:00 p.m., as a virtual meeting.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 24th day of August, 2020.

SIGNED by the Mayor on this 24th day of August, 2020.

Bud Starker, Mayor

ATTEST:

Steve Kirkpatrick, City Clerk

Approved as to Form

Gerald E. Dahl, City Attorney

First Publication: August 13, 2020

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CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER URBAN
ON MOTION TO RECONSIDER
ORDINANCE NO. 1696
Series 2020

TITLE: AN ORDINANCE, REPEALING CHAPTER 16, ARTICLE X "MASSAGE PARLORS" AND REENACTING REGULATION OF MASSAGE BUSINESSES BY AMENDING CHAPTER 11, "LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS", BY THE ADDITION OF A NEW ARTICLE X, ENTITLED "MASSAGE BUSINESSES" AND MAKING CONFORMING AMENDMENTS TO CHAPTER 2, ARTICLE V "ADMINISTRATIVE ENFORCEMENT" AND CHAPTER 26 "ZONING AND DEVELOPMENT"

WHEREAS, the City of Wheat Ridge, 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 12-235-101 *et seq.*, 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 Council finds that the purpose and intent of this Act was to regulate and protect legitimate massage therapy businesses by requiring persons performing massage therapy to be licensed by the state's Department of Regulatory Affairs, in order to safeguard and promote the public health, safety and welfare of the citizens of the state; and

WHEREAS, the City Council recognizes 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 businesses and individuals who mask their unlawful sexual activities and human trafficking by falsely posing as legitimate massage therapy businesses; and

WHEREAS, the City Council finds that the licensing exclusions provided herein to certain businesses are reasonable as they are either currently subject to licensing and regulation by the State of Colorado or they pose a very low risk of engaging in unlawful sexual or human trafficking activities; and

WHEREAS, there are currently no massage parlors in the City that will be adversely affected by the repeal of the provisions of Chapter 16, Article X of the City Code (the "Code").

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

Section 1. Chapter 16, Article X of the Wheat Ridge Code of Laws is hereby repealed.

Section 2. Chapter 11 of the Wheat Ridge Code of Laws is hereby amended by the addition of a new Article X, entitled *Massage Businesses*, as follows:

ARTICLE X. – MASSAGE BUSINESSES

Section 11-230. – Purpose.

The purpose of this article is to promote the public health, safety and welfare of the public, including but not limited to its citizens and residents, by regulating and licensing massage businesses.

Section 11-231. – Authority.

This article is adopted under the authority conferred by §31-15-401(1)(b), C.R.S. to make all regulations necessary or expedient for the promotion of health or suppression of disease and by §31-15-501(1)(c), C.R.S. to license and regulate businesses, and the home-rule authority conferred by Article XX, Section 6 of the Colorado Constitution, .

Section 11-232. – 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 business 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 business 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 business, or for the delivery of goods to the licensee.

Inspector means any person authorized by the City Manager to enforce the provisions of this Article.

Licensee means the person or entity to whom a massage business license is issued, by the city.

Manager means an on-site natural person or persons 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 article.

Massage Business means any place of business where any massage or massage therapy is practiced or administered. The term "massage business" shall not include:

- (a) 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.
- (b) Training rooms of recognized professional or amateur athletic teams.
- (c) 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.
- (d) Medical facilities licensed by the state, including but not limited to hospitals, clinics, nursing and convalescent homes and other similar institutions.
- (e) Chiropractors licensed by the state and their facilities.
- (f) 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.
- (g) 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.
- (h) A place of business where an individual offers to perform or performs massage therapy:
 - (1) For not more than 72 hours in any six-month period and
 - (2) As part of a public or charity event, the primary purpose of which is not to provide massage therapy.
- (i) A place of business where a state-licensed massage therapist practices as a solo practitioner, and complies with all required acts and limitations of operation of this section and;
 - (1) Does not use a business name or assumed name; or
 - (2) 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
 - (3) Does not maintain or operate a table shower as defined in this section.

- (j) A place of business which limits its business to offering the following practices performed by persons who:
 - (1) Do not claim expressly or implicitly to be massage therapists; and
 - (2) Limit their work to one or more of the following practices:
 - a. 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
 - b. 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
 - c. 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
 - d. 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
 - (3) If any of the practices listed in (2) above have nationally recognized certification available in their particular practice industry, the practitioners shall hold current active certification or recognition by a professional organization or credentialing agency in their respective industry that:
 - a. 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
 - b. Maintains disciplinary procedures to ensure adherence to the requirements of the organization or agency; and
 - c. Provide consumers with contact information for the organization or agency in the practitioner's place of business.

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.

Massage Therapist is an individual that has fulfilled the requirements for state licensure under Section 12-235-101 *et seq.*, 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.

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 business 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 in a tub.

Section 11-233. Licenses generally; minimum requirements.

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

Section 11-234. Licenses required.

- (a) No person or entity shall be permitted to operate a massage business in the city without a valid massage business license in addition to the business license required by Chapter 11, Article II. Additionally, no person or entity shall be permitted to operate such massage business without a licensed manager on site at all times, except as provided in (c) below. A massage business may obtain manager's licenses for more than one individual.
- (b) No person shall be permitted to work as a manager of a massage business without a valid massage business manager's license.
- (c) An individual massage therapist operating a massage business as a solo practitioner, but who is not exempt from licensure under Section 11-232. Definition of *Massage Business* (i), is not required to obtain a massage business manager's license.

Section 11-235. Application.

- (a) In addition to the requirements of this Chapter and Chapter 11, Article II, each application for a massage business 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 of, or plead "nolo contendere" to, 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 business ordinance from another jurisdiction or possession of the United States, denied, suspended, or revoked, and, if so, the name and location of the massage business 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 business or business meeting the definition of massage business 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 business 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 for a massage business manager's license shall submit an application for a manager's license on a form prescribed by the city treasurer and filed at the offices of the city treasurer, 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 paragraph (a) above and, if the applicant or any other person listed in the application have been involved in a criminal act as described in paragraph(a) above, 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 11-236. Review by other departments.

- (a) Prior to the issuance of any massage business license or a massage business manager's license, the corresponding application shall be submitted to the Police Department for review and comment. The Police Department shall provide any relevant and available 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 11-235. 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 11-237. Issuance; denial.

- (a) If after an investigation, the city treasurer finds, in addition to any findings required by section 11-25, that the individual applicant and each of the individuals required to be listed in the massage business license application meet the requirements in subsection 11-235(a) and:
 - (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 business 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 business 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 or possession 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 does not indicate that potential violations of this chapter are likely to occur if a license is issued to the applicant.

Then he or she shall, within 30 days following receipt of the, license application, approve the issuance of massage business 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 treasurer shall explain with reasonable details in writing the reason for the denial and the applicant's rights to a hearing under section 11-32.

- (b) If, after investigation, the treasurer finds, in addition to the findings required by section 11-25(a), that:

- (1) The applicant for a massage business manager's license meets all the requirements of subsection 11-235(b); and
- (2) If the applicant will be performing massage or massage therapy, the applicant has completed all requirements of section 12-235-101 *et seq.*, C.R.S, and holds a valid state massage therapist license.

Then he or she shall, within 30 days following receipt of the license application, issue a manager's license to the applicant.

- (c) Upon the sale or transfer of any interest in a massage business, the license issued pursuant to this article shall be null and void, and a new application shall be required.

Section 11-238. Temporary license.

- (a) The treasurer may issue a temporary massage business license upon receipt of a complete massage business 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 business license.

- (b) The treasurer may issue a temporary massage business 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 business. Such license shall be issued for 30 days and may be renewed for good cause for additional 30-day periods at the discretion of the treasurer.

Section 11-239. Limitations on operation.

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

- (a) To operate a massage business without a valid massage business 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 business who is not licensed as a manager or a licensed owner.
- (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 12-235-101, *et seq.*, C.R.S.
- (d) To operate or maintain a table shower or Vichy shower on the premises unless permission to operate a table shower was approved as part of its massage business license.
- (e) To permit a licensed massage business 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 business operated as a home occupation, as defined by this Code, 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, employee clothing shall be of a fully opaque, nontransparent material that shall not expose the employee's genitals, pubic region, buttocks, or breasts below a point one inch above the top of the areola, 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 use or possess adult-oriented merchandise, including sex toys, sexual aids, vaginal or anal lubricant, or any contraceptive item, in any part of a massage business.

- (j) To permit any individual, including a client, student, contractor, or employee, to engage in any sexual act in the massage business.
- (k) To fail to immediately report to the Wheat Ridge Police Department any disorderly conduct, sexual acts, or other criminal activity occurring on or within the licensed premises.
- (l) To make an agreement, or to permit any individual to make an agreement with an employee, to engage in sexual activity in any other location, in violation of Section 16-201 or 16-202.
- (m) To conceal persons in the business or to elude city inspectors, by exiting side or back doors or remaining behind locked doors during an inspection.
- (n) To refuse to provide identification to city inspectors or law enforcement,
- (o) To perform or permit anyone to perform massage without a valid massage therapist's license issued under section 12-235-101, *et seq.*, C.R.S.
- (p) To perform or permit anyone to perform massage on a patron under the age of eighteen (18) years, unless such patron is accompanied by his or her parent or legal guardian, has a physician's prescription for such massage services, or has a letter from his or her parent or legal guardian authorizing such services.
- (q) To operate the business between the hours of 9:00 p.m. and 6:00 a.m.

Section 11-240. Required Acts.

- (a) Every licensed massage business is required to:
 - (1) Maintain a current and up-to-date list of employees and contractors on site including start dates of employment or contracted service, full legal name, date of birth, home address and telephone number, employment position, date first began employment or service, and the date when services were terminated if applicable.
 - (2) Maintain a copy of each massage therapist's Colorado license for each employee and contractor performing massages.
 - (3) Maintain a complete set of records to include a log of all massage or massage therapy administered at the business. 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.
 - (4) Operate under or conduct business under only the designation specified in the license.

- (5) List the address of the business in any advertisement.
- (6) Ensure that massage facilities interior and exterior doors remain unlocked while the massage business is open. The exception to this requirement is as follows: The exterior doors may remain locked if (i) the massage business is operated as a home occupation or (ii) during the time period when only one employee is present in the business.
- (7) Display at all times in a prominent place on the licensed premises a printed card with a minimum height of fourteen (14) inches and a width of eleven (11) inches with each letter a minimum of one-half (½) inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS THE MINOR IS AUTHORIZED OR ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN, OR HAS A PHYSICIAN'S PRESCRIPTION FOR SUCH MASSAGE SERVICES.

FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER THE WHEAT RIDGE CODE OF LAWS.

- (b) All employees, contractors, and other individuals, excluding clients, present in the massage business must have valid government identification in one of the following forms and must immediately present such identification upon request of an inspector or law enforcement personnel:
 - (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.
- (c) Massage therapists shall remain fully clothed, as described in section 11-239(g), while administering massage or otherwise visible to clients on business premises, including premises designated by the client through an outcall massage service.

Section 11-241. Inspections.

- (a) No owner, manager, massage therapist, or employee shall fail to immediately grant full massage business access any time such establishment is occupied or open or business, to a licensing administrator, authorized inspector, law enforcement officer, or any other person authorized or required by law to inspect the massage business.
- (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) No owner, manager, massage therapist, or employee shall fail to immediately grant access to the log of all massage therapy administered at the business, as required in Section 11-240(a)(3), to a licensing administrator, authorized inspector, law enforcement officer, or any other person authorized or required by law to inspect the massage business, 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 business, other than clients, shall present identification and shall not elude identification.

Section 11-242. Table or Vichy showers.

- (a) In order to operate or maintain a table or Vichy shower on or about the licensed premises, such device must be specifically allowed as a permitted device on the massage business license.
- (b) The treasurer may approve the use of a table or Vichy shower in the license if the following conditions are met:
 - (1) The 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 business practices appropriate draping of a shower 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 treasurer has reason to believe that there is a failure to comply with the conditions in subsection (b) of this section, the treasurer shall provide

licensee with written notice that permission to operate a table or Vichy shower as part of its license is terminated and the business shall not be allowed to operate such shower.

- (d) The licensee may appeal the termination or denial of shower use in accordance with section 11-32.

Section 11-243. Enforcement processes for revocation or suspension of licenses.

- (a) Administrative suspension or revocation. In addition to any reason set forth in sections 11-30 and 11-31, and notwithstanding any provision of this Chapter to the contrary, the city treasurer or the treasurer's designee may suspend or revoke a massage business license or a massage business manager's license, under the provisions of Article V of Chapter 2, if he or she finds that:

- (1) The licensee has committed a violation of any section of this Article X; or
- (2) Any employee or contractor required by this Article to possess a valid massage therapist license obtained their license through fraud, deceit or misrepresentation, or the state has revoked said massage therapy license.

- (b) Summary suspension or revocation.

(1) Grounds. Notwithstanding any provision of Article II. of this Chapter or the notice provisions of Chapter 2, Article V. to the contrary, the city treasurer or the treasurer's designee may summarily suspend a massage business license or a massage business manager's license, upon a finding that:

- A. The licensee willfully failed to disclose any information as required in section 11-235; or
- B. The licensee knowingly permitting a person to perform massage therapy when licensee should have reasonably known that such person was not licensed in accordance with section 12-235-101, *et seq.*, C.R.S.; or
- C. A pattern of credible facts emerges that the business is attempting to operate a prostitution enterprise whether or not there is a violation of any other specific law, rule, or code; or
- D. A pattern of credible facts emerges that the licensee knowingly concealed persons within the business premises or permitted employees or contractors to elude inspection; or
- E. A pattern of credible facts emerges that a person who was not licensed in accordance with section 12-235-101, *et seq.*, C.R.S., and

did not possess a valid massage therapist license performed massage at the licensed premises; or

- F. The licensee failed to permit an inspection any time the business is occupied or open for business; or
- G. For a business not possessing a valid massage business license, the licensee has had a license revoked for cause anytime within the prior twenty-four (24) months for the same or a substantially similar business either in the city or in another jurisdiction.

(2) Process. Upon a finding that one or more grounds exist for the summary suspension of a massage business license or a massage business manager's license, the city treasurer shall:

- A. Cause a notice of summary suspension of license to be served upon the licensee. The notice shall provide for a hearing to be held within fifteen (15) business days to determine whether the suspension should be terminated or continued or whether the license should be revoked; and
- B. Post a sign upon the licensed premises that the massage business is closed to the public until further notice.

(3) Hearing. The hearing on the summary suspension of a license shall be held pursuant to section 2-88 of this Code. Notwithstanding the provision of Sec. 2-88(e), the administrative hearing officer is authorized to decide if the license under summary suspension should be revoked.

(4) Appeal. Final decisions of the administration hearing officer may be appealed to the district court of Jefferson County.

(5) Additional enforcement remedy. Any massage business found to be operating without the licenses required by Section 11-234 or that continues operating after receiving a notice of summary suspension under subsection 11-243(b), above, is hereby declared to be a nuisance and may be abated pursuant to the provisions of Chapter 15 of this Code.

Section 11-244. Supplemental provisions. The city treasurer or the treasurer's designee, at his or her discretion, may:

- (a) Promulgate rules for approving professional organizations or credentialing agencies; and
- (b) Verify exempt status of individuals, in keeping with the intent of this Article; and
- (c) Exempt additional practices from the requirements of this ordinance; and
- (d) Determine that a practice defined as excluded under the Definition of Massage Business, herein, is no longer exempt, 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.

Section 11-245. Fees.

The application and annual license fees for a massage business license and a massage business manager's license shall be established by the city manager or the manager's designee as part of the annual budget process.

Section 3. Section 2-80 of the Wheat Ridge Code of Laws is hereby amended, as follows:

Sec. 2-80. - Purpose; scope.

The purpose of this article is to encourage prompt compliance with this Code and prompt payment of penalties for violations thereof. This article provides for administrative penalties that may be imposed for violation of the following portions of this Code: Chapter 5, Buildings and Building Regulations; Chapter 9, Health; Chapter 13, Motor Vehicles and Traffic; Chapter 15, Nuisances; Article X of Chapter 11 concerning Massage BUSINESSES ~~Chapter 16, Concerning Massage Parlors, but not to include the balance of Chapter 16, Miscellaneous Offenses;~~ Chapter 21, Streets and Sidewalks; Chapter 22, Taxation; Chapter 24, Vegetation; Chapter 26, Zoning.

Section 4. Subsection 11-32(f) of the Wheat Ridge Code of Laws is hereby repealed.

Section 5. Section 15-16 of the Wheat Ridge Code of Laws is hereby amended, by the addition of the following subsection:

Sec. 15-16. - Offensive trade or business.

...

(7) *Certain Massage Businesses.* A massage business that is operating without possessing the licenses required by Section 11-234 of this Code, or that continues to operate after receiving a notice of summary suspension under Section 11-243(b) of this Code.

Section 6. Section 26-123 of the Wheat Ridge Code of Laws is hereby amended, as follows:

Section 26-123. - Definitions.

For the purpose of this zoning code, and as used or referred to in other sections, chapters or articles of the Wheat Ridge Code of Laws, unless specifically defined otherwise, the following words and terms are defined as follows. Words used in the present tense include the future; words in the singular number include the plural, and words in the plural number include the singular; the word "building" includes the word "structure" and the word "shall" is mandatory and not directory. Any word or term used in this chapter not specifically defined BELOW~~above~~ shall be interpreted as that word is defined elsewhere in the Wheat Ridge Code of Laws, or if not defined elsewhere in the Code of Laws, as defined in Colorado Revised Statutes, or if not defined in the statutes, as defined in Webster's Dictionary.

Section 7. The Table of Uses – Commercial and Industrial Districts contained in Section 26-204 is hereby amended, as follows:

Uses	Notes	NC	RC	C-1	C-2	I-E
Massage parlor						P
Massage therapist	See Chapter 11, Article 10 Code of Laws for additional restrictions	P	P	P	P	P
Massage therapy center	See Chapter 11, Article 10 Code of Laws for additional restriction	P	P	P	P	P
MASSAGE BUSINESS	See Chapter 11, Article X, Code of Laws for additional restrictions	P	P	P	P	P

The Table of Uses – Permitted Uses (mixed use zone districts) contained in Section 26-1111.B.1 is hereby amended by the addition of a new line under “Commercial Services and Retail” as follows:

Uses	Notes	MU-C	MU-C Interstate	MU-C TOD	MU-N
MASSAGE BUSINESS	See Chapter 11, Article X, Code of Laws for additional restrictions	P	P	P	P

Section 8. Subparagraph A.11.l. of Section 26-613 is hereby amended, as follows:

Sec. 26-613. Home occupations.

...

11. Home occupations are limited to the following business or commercial activities:

...

1. Massage therapist, restricted to one (1) practitioner, POSSESSING A CURRENTLY VALID MASSAGE THERAPIST LICENSE ISSUED BY THE STATE OF COLORADO PURSUANT TO SECTION 12-235-101. ET. SEQ., C.R.S. AND subject to the restrictions of Chapter 11, Article X of the Code of Laws.

m. Other similar uses as approved by the director of community development or board of adjustment and when in conformance with the standards and requirements set forth herein.

Section 9. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 10. Compliance Required – Schedule. Massage businesses, holding valid business licenses issued under Article II. of Chapter 11 of the Wheat Ridge Municipal Code on the date of final passage of this Ordinance, shall come into full compliance with the requirements of this ordinance within ninety (90) days after the effective date of this ordinance. Such businesses will be exempt from the payment of fees for their massage business license if they apply within thirty (30) days after the effective date of this ordinance. Except as specifically described in this Section 10, the requirements of this Ordinance shall apply to all new or currently unlicensed massage businesses upon the effective date of this Ordinance.

Section 11. Effective Date. This Ordinance shall take effect immediately upon readoption, as permitted by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 7 to 0 on this 27th day of July, 2020, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for August 8, 2020 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 10th day of August, 2020.

RECONSIDERED, AMENDED AND READOPTED by a vote of 8 to 0 on this 24th day of August, 2020.

SIGNED by the Mayor on this _____ day of August, 2020.

Bud Starker, Mayor

ATTEST:

Stephen Kirkpatrick, City Clerk

Approved as to Form

Gerald E. Dahl, City Attorney