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AN ORDINANCE

**ADDING A NEW CHAPTER 5.53 OF THE LAKEWOOD MUNICIPAL CODE
PERTAINING TO THE LICENSING OF ESCORT SERVICES AND AMENDING
SECTION 9.45.020 AND SECTION 9.50.080 OF TITLE 9 PERTAINING TO
PUBLIC PEACE AND SAFETY**

WHEREAS, it is necessary to regulate and license the operation of escort services in the City to protect the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City wishes to discourage prostitution and other unlawful activity which otherwise may become associated with some escort services by conducting criminal background checks of persons engaged in the provision of escort services and establishing standards of conduct for escorts and escort service runners; and

WHEREAS, the Colorado Escort Service Code, Article 25.5 of Title 12, C.R.S., establishes minimum standards for the licensing of escort services, escorts, and escort service runners and specifically allows municipalities to enact more stringent licensing requirements.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. A new Chapter 5.53 is hereby added to the Lakewood Municipal Code to read as follows:

CHAPTER 5.53

ESCORT SERVICES

Sec. 5.53.010 Purpose

This chapter is enacted for the purpose of providing for the orderly regulation and licensing of escort services in the City by establishing certain minimum standards for the conduct of this type of business, in order to protect the health, safety, and welfare of the citizens of the City.

Sec. 5.53.020 Definitions

As used in this chapter, the following words and terms shall be defined as follows:

“Escort” means any person who for a salary, fee, commission, hire, or profit, makes himself/herself available to the public for the purpose of accompanying other persons for companionship.

“Escort service” means any business, agency, or person who, for a fee, commission, hire, or profit, furnishes or arranges for persons to accompany other persons for companionship.

“Escort service runner” means any person who, for a salary, fee, hire, or profit, acts in the capacity of an agent for an escort service by contacting or meeting with escort patrons whether or not said person is employed by such escort service or by another business or is self-employed.

“Escort patron” means any person who seeks the services of an escort, escort bureau, or escort bureau runner.

“Specified criminal acts” means any crime of moral turpitude and any criminal offense which is included in the definition of “unlawful sexual behavior” under the Colorado Sex Offender Registration Act, 16-22-102, C.R.S. or any offense committed in another state or jurisdiction, including but not limited to a military or federal jurisdiction that, if committed in the state of Colorado, would constitute an offense involving unlawful sexual behavior, or any offense that has a factual basis of one (1) of the offenses specified in the definition of “unlawful sexual behavior.” Specified criminal act also includes any offense involving solicitation for prostitution, prostitution, patronizing a prostitute, pandering, pimping, prostitute making display, keeping a place of prostitution, public indecency, or distribution or possession of obscene materials, and any adult business or massage parlor/ therapist violations.

Sec. 5.53.030 License Required for Escort Services

A. Escort. It shall be unlawful for any person to hold oneself out to the public as an escort, accept compensation as an escort, or conduct escort services or activities within the City without having first obtained an escort license pursuant to the terms of this chapter.

B. Escort Service. It shall be unlawful for any person to operate or manage an escort service within the City without having first obtained an escort services license pursuant to the terms of this chapter.

C. Escort Service Runner. It shall be unlawful for any person to represent oneself as an escort service runner, accept compensation as an escort service runner, or conduct escort service runner services or activities without having first obtained an escort service runner license pursuant to the terms of this chapter.

D. Separate License Required. Every escort or escort service runner must obtain a separate and distinct license for each escort bureau for which he/she is employed, including self-employment.

Sec. 5.53.040 Application

A. All applicants for an escort service license, an escort license, or an escort service runner license shall file a completed application for such license with the City Clerk on forms to be provided by the City Clerk. Each individual applicant, partner of a partnership, officer or director of a corporation, and manager of a limited liability company shall be named in each application form and each of them shall be photographed and fingerprinted by the Lakewood Police Department. The applicant shall pay any fees for the photographs and fingerprints.

B. Each application for an escort services license, an escort license, or an escort service runner license shall contain the following information verified by oath or affirmation of the applicant and shall be accompanied by the following documents:

1. If the applicant is an individual, the individual shall state:
 - a. The applicant's name or any other names or aliases used by the individual;
 - b. The applicant's date of birth, place of birth, height, weight, color of eyes and hair;
 - c. The current residential and business addresses and telephone number of the applicant;
 - d. Each residential and business address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each such address;
 - e. Current state driver's license or government-issued photo identification card showing proof that the applicant is at least eighteen (18) years of age or other proof of lawful presence in the United States;
 - f. Applicant's business, occupation and employment history for the five years immediately preceding the date of application;

2. If the applicant is a partnership, the applicant shall state the partnership's complete name, the names of all partners and whether the partnership is general or limited, and shall provide a copy of the partnership agreement, if any;

3. If the applicant is a corporation, the applicant shall state the corporation's complete name, the date of its incorporation, evidence that the corporation is in good standing under the statutes of the State of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado, the names and capacities of all officers and directors, and the name of the registered corporate agent and the address of the registered office for service of process;

4. If the applicant is a limited liability company, the applicant shall state the company's complete name, the date of its formation, evidence that the company is in good standing under the statutes of the State of Colorado, or in the case of a foreign company, evidence that it is currently authorized to do business in the State of Colorado, and the name of the manager and registered agent and the address of the registered office for service of process.

C. Each license application for an escort services license, an escort license or an escort runner license shall contain the following information verified by oath or affirmation of any individual applicant, any of the other individuals required to be listed in the application, or any manager:

1. The license or permit history for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension. The applicant shall list any licenses or permits previously or currently held from any other jurisdiction, and if so, the name and jurisdiction that issued such other licenser or permit;

2. Whether the applicant has been arrested for any criminal act, the date of the arrest, and the location of the offense; and

3. The present or intended business address and telephone number of the business premises.

D. Each applicant for an escort services license, an escort license, or an escort runner license shall submit a copy of the applicant's criminal history from the state of Colorado. The Police Department may require the submission of criminal histories from additional states as warranted.

F. The City Clerk shall not accept any application that is not complete in every detail. If the City Clerk discovers an omission or error, the application shall be rejected and returned to the applicant for completion or correction without further action by the City Clerk. All fees shall be returned with the application. For the purposes of

this chapter, the date the City Clerk accepts an application that is complete in every detail, including the receipt of the criminal history from the Colorado Bureau of Investigations, shall be considered the filing date.

G. When a complete application for a license has been accepted for filing, the required individuals have been fingerprinted and photographed, and the license fee has been paid, the City Clerk shall transmit the application to the Lakewood Police Department for investigation of the background of each individual applicant and each of the other individuals required to be listed in the license application, and to investigate the accuracy of all the information submitted as a part of the application. The investigation required by this section should be completed within ninety (90) days from the date the application is submitted to the Police Department. The Police Department shall promptly forward the application and its completed investigation to the City Clerk for administrative review.

H. An application with completed background investigation shall be administratively approved or denied by the City Clerk. An application shall be approved and a license shall be issued unless the City Clerk or his/her designee finds that one or more of the following is true:

1. That the applicant knowingly made a false statement or knowingly gave false information in connection with the application;
2. That the applicant is under eighteen (18) years of age;
3. That the applicant has been convicted of a specified criminal act or the applicant was arrested for a specified criminal act that was dismissed due to a plea bargain in which the applicant pled guilty to a criminal act in exchange for the dismissal of the specified criminal act;
4. That the escort services license, escort license or escort runner license is to be used for employment in a business or establishment of a business prohibited by local or state law, statute, rule or regulation; or
5. That the applicant has had an escort services license, an escort license, or an escort runner license revoked or suspended within five (5) years of the date of the current application.

H. The applicant may present written documentation to the City Clerk regarding his/her criminal history, including but not limited to evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

5.53.050 Application Fees

A. Each applicant, whether an individual, partnership, limited liability company, or corporation, shall pay an application processing fee of fifty dollars (\$50.00) at the time of submitting any application to the City Clerk. In the future, all fees will be set by City Council resolution. Such application fee shall be nonrefundable.

B. Each applicant shall pay an application investigation fee in the amount then charged by the Colorado Department of Public Safety for each person who will be investigated as required by this chapter.

5.53.060 Appeal of Application Denial

A. Written Findings. In the event that the City Clerk denies a license application, the City Clerk shall prepare written findings of fact stating the reasons or basis for the denial. A copy of the City Clerk's findings shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application within ten (10) days after the date of the City Clerk's denial. The City Clerk's decision to deny a license application shall become a final administrative decision of the City on the fourteenth (14th) day following the date of the denial unless the applicant files a timely request for appeal to the City Manager or his designee as provided in this section.

B. Appeal Hearing. In the event that the City Clerk denies a license application, an applicant shall have the right to a quasi-judicial hearing before the City Manager or his designee for the purpose of appealing the City Clerk's administrative decision. Any request for a hearing must be made in writing to the City Manager or his designee within ten (10) days of the date of the mailing of the City Clerk's written findings and denial of the license application. The hearing shall be conducted within fourteen (14) days of the City Manager's or his designee's receipt of the written request for a hearing unless a later date is requested by the applicant.

C. Scheduling. Upon receipt of a timely request for a hearing, the City Manager or his designee shall schedule a hearing and notify the applicant of the date, time, and place of the hearing. The City may make such notification by telephone provided that a written notice shall also be mailed or delivered to the applicant at the applicant's address shown in the application. An attorney or other representative may represent an applicant at the hearing. An applicant or the City may request a continuation or postponement of the hearing date.

D. Subpoenas. The City Manager or his designee shall have the power to administer oaths, issue subpoenas to require the presence of persons, and when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing which the City Manager or his designee conducts. It is unlawful for any person to fail to comply with any subpoena issued by the City Manager or his designee. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State. Upon failure of any witness to comply with such subpoena, the City Attorney or the applicant may:

1. Petition any judge of the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting that the court, after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court; or

2. Petition the District Court in and for Jefferson County, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting that the court, after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court.

E. Conduct of Hearing. At the hearing, the City Manager or his designee shall hear and consider such evidence and testimony presented by the City, the applicant, or any other witnesses called by the City or the applicant which are relevant to the stated reason and basis for the City Clerk's denial of the license application. The City Manager or his designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

F. Written Order. Not less than fourteen (14) days following the conclusion of the hearing, the City Manager or his designee shall send a written order by certified mail, return receipt requested, to the applicant at the address as shown on the application. The order shall include findings of fact and a final decision concerning the approval or denial of the application. In the event that the City Manager or his designee concludes that the application is approved, such approval shall constitute approval by the City Clerk, and the applicant may seek issuance of a license in accordance with this Chapter.

G. Appeal of Order. The order of the City Manager or his designee made pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal, the City Manager's or his designee's decision shall be final upon the earlier of the date of the applicant's receipt of the order or four (4) days following the date of mailing.

5.52.070 Term of the license

An escort services license, escort license, or escort runners license shall be valid for a period of one year, unless revoked or suspended.

5.52.080 License fee

The annual license fee for any license issued pursuant to this chapter shall be payable to the City Clerk at the time an initial license application is filed or at the time a renewal application is filed. The license fee is in addition to any application fee required by this chapter. The license fee shall be nonrefundable unless an application is denied. The fee shall be twenty-five dollars (\$25.00). In the future, all fees will be set by City Council resolution.

5.52.090 Renewal

A. As a prerequisite to renewal of an existing license issued pursuant to this chapter, the applicant must pay the annual license fee and file a completed renewal application with the City Clerk not less than forty-five (45) days prior to the date of the license expiration. The City Clerk may waive the timely filing requirement where the licensee demonstrates in writing that the failure to timely file is not solely the result of the licensee's negligence; provided that no renewal application shall be accepted by the City Clerk from any licensee after the license for which renewal is requested has expired.

B. A license that is under suspension may be renewed in accordance with this Section provided that such renewal shall not modify, alter, terminate, or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this section. The City Clerk may administratively renew a license.

5.52.090 Denial of Renewal, Suspension or Revocation of License.

A. Denial of Renewal, Suspension or Revocation. The City Manager or his designee may deny renewal, suspend, revoke, modify, or place conditions on the continuation of an escort services license, escort license, or escort runner license upon a finding that the licensee:

1. Has violated any of the provisions of this chapter;
2. Has engaged in a specified criminal act; or
3. Has allowed or has permitted any other person to violate any of the provisions of this chapter or engage in a specified criminal act.

B. Other Enforcement Authorized. A licensee shall be entitled to a quasi-judicial hearing before the City Manager or his designee if the City seeks to deny renewal, suspend, revoke, modify, or place conditions on a license based on a violation of this chapter.

1. When there is probable cause to believe that a licensee has violated or permitted a violation of this chapter or other laws to occur, the City Attorney may file a written complaint with the City Manager or his designee setting forth the circumstances of the violation.

2. The City Manager or his designee shall send a copy of the complaint by certified mail, return receipt requested, to the licensee at the address as shown on the license application, together with a notice to appear before the City Manager or his designee for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee's license should not be suspended. Such hearing shall be held on a date not less than fourteen (14) days following the date of mailing of the complaint and notice to the licensee. A licensee may be represented at the hearing by an attorney or other representative.

C. Conduct of Hearing. At the hearing, the City Manager or his designee shall hear and consider such evidence and testimony presented by the Police Department or other enforcement officers, the City, the licensee, or any other witnesses called by the City or the licensee which are relevant to the violations alleged in the complaint. The City Manager or his designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded either stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record. Subpoenas may be issued in accordance with the provisions of Section 5.52.070.

D. Written Findings. The City Manager or his designee shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued not less than fourteen (14) days following the conclusion of the hearing. If the City Manager or his designee determines that a violation did occur which warrants denial of renewal, suspension, revocation, modification, or conditioning of the license pursuant to this section, he shall also issue an order suspending, revoking, modifying, or placing conditions on the license. A copy of the findings, conclusion, and order shall be hand delivered or mailed to the licensee by certified mail, return receipt requested, at the address as shown on the license application.

E. Appeal. The order of the City Manager or his designee shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the City Manager's or his designee's decision shall be final upon the earlier of the date of the applicant's receipt of the findings, conclusion, and order or four (4) days following the date of mailing of the City Manager's or his designee's decision.

F. No Refund and Costs of Enforcement. In the event of suspension, revocation, modification, conditioning, or cessation of business, no portion of the license

fee shall be refunded. Any person whose license is suspended, revoked, modified, or conditioned under this section, shall be required to pay the costs incurred by the City to enforce this ordinance, including but not limited to attorneys' fees, expert witness and/or consultant fees.

5.52.100 Transferability

A license issued under this chapter shall not be transferable.

5.52.110 Display of License

A. Every licensee shall display a valid license in a conspicuous place within the escort service or other place of business so it may be readily seen by persons entering the premises. Every licensed escort or licensed escort runner shall carry or have readily available a city escort photographic identification card at all times while in or upon the licensed premises or while acting as an escort or escort services runner and shall display it upon the demand of a peace officer or a designee of the City Clerk.

B. The photographic identification card shall at all times be the property of the City and must be surrendered upon suspension, revocation, or voluntary termination of the license.

5.53.120 Unlawful Acts.

A. It is unlawful for any escort, escort service runner, or escort patron during or in connection with the provision of escort services to:

1. Knowingly expose his or her genitals, anus, buttocks, pubic region, or female breasts;
2. Touch, or to encourage, facilitate, or aid another in touching the genitals, anus, buttocks, pubic region, or female breasts of any person even if completely and opaquely covered; or
3. Engage in, encourage, or request, or permit any person to engage in, encourage, or request, acts of anal intercourse, cunnilingus, fellatio, masturbation, or sexual intercourse as such terms are defined in Section 9.45.010 of the Lakewood Municipal Code.

B. It shall be unlawful for any person:

1. To work, to employ, to allow, or to permit any person to act as an escort or escort service runner if the person is not in possession of a valid city escort photographic identification card and license issued pursuant to this chapter;

2. To interfere with or refuse to permit any inspection of the premises of an escort service by the Lakewood Police Department or agent of the city acting in compliance with Section 5.53.130;

3. To allow the provision or procurement of any escort service to or for any person under the age of eighteen (18) years without the written consent of that person's parent or legal guardian; or

4. To permit any person under the age of eighteen (18) to be employed in an escort service. If any person who, in fact, is not eighteen years of age exhibits a fraudulent proof of age, reasonable reliance on such fraudulent proof of age may constitute an affirmative defense to any actions seeking the revocation or suspension of any license issued under this chapter or to any criminal action arising because a person is not at least eighteen years of age.

C. For the purposes of this section, "in connection with" means any act which furthers, advances, promotes, or has a continuity of purpose, and may occur before, during, or after the provision of an escort service.

5.53.130 Right of Entry

The Lakewood Police Department or any other authorized agent of the City may conduct routine inspections of escort services to ensure compliance with the requirements of this chapter.

5.53.140 Duties of Escort Service

A. Every escort service shall refer all prospective escorts or escort service runners to the City Clerk for licensing. Upon termination of employment of any escort or escort service runner with such escort service, the escort service shall notify the City Clerk of such termination within five (5) days.

B. The escort service shall provide to each escort patron a written contract for services as required by Section 12-25.5-112, C.R.S. The contract shall clearly state the names and addresses of the escort and customer, the type of services to be performed, the length of time such services shall be performed, the total amount of money such services will cost the escort patron, and any special terms or conditions relating to the services to be performed. The contract shall include, printed in bold block letters and no smaller than the impression of twelve-point type, the following statement:

"Warning: prostitution is illegal in the State of Colorado. Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with another person being not his or her spouse in exchange for money or other thing of value commits prostitution. Both parties to an act of prostitution may be punished by both fine and imprisonment. No act of prostitution shall be performed in relation to the services for which you have contracted. "

C. Each contract shall be numbered and utilized in numerical sequence by the escort service. The contract shall be signed by the escort patron and a copy furnished to him/her.

D. The escort service shall also retain copies of all such contracts, and one copy of each such contract executed in any calendar month shall be transmitted by the escort service to the City Clerk no later than ten days after the last day of such month. The City Clerk shall treat such contracts so transmitted as open public records.

5.53.150 Penalty

A. Any person violating any provision of this chapter shall be punished pursuant to Chapter 1.16 of the Lakewood Municipal Code.

B. The penalties provided in this section shall not be affected by the penalties provided in any other section of this chapter but shall be construed to be in addition to any other penalties.

5.53.160 Severability

If any paragraph or subparagraph of this chapter is held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not invalidate the remainder of this chapter and, to this end, the provisions of this chapter are declared to be severable.

5.52.170 Effective Date

All persons required by the terms of this chapter to be licensed shall submit a completed license application to the City Clerk within 30 (thirty) days of the effective date of this ordinance.

SECTION 2. Section 9.45.020 of the Lakewood Municipal Code is hereby amended to read as follows:

9.45.020 Prostitution prohibited.

A. Any person who performs, offers, or agrees to perform any act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or masturbation with or in the presence of any person not his or her spouse in exchange for money or other thing of value commits the crime of prostitution.

B. Any person while giving a massage or while appearing nude or semi-nude, who permits or encourages another person not his or her spouse to masturbate in exchange for money or other thing of value commits the crime of prostitution.

SECTION 3. Section 9.50.080 of the Lakewood Municipal Code is hereby amended to read as follows:

9.50.080 Public indecency.

A. It is unlawful for any person to commit public indecency. Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

A1. An act of sexual intercourse; or

B2. An act of deviate sexual intercourse; or

C3. A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or

D4. A lewd fondling or caress of the body of ~~oneself~~ or another person; or

E.5. An act of masturbation.

B. For the purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

SECTION 4. This ordinance shall take effect thirty (30) days after final publication.