

DATE: June 2<sup>nd</sup>, 2022  
TO: Mayor & Council  
FROM: Planning Director  
SUBJECT: Municipal Code Amendment  
Message Establishments

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### **Background**

The Official Code of Georgia (OCGA) prohibits a county, municipality or other local jurisdiction from impeding the lawful practice of massage therapy. Conditions or requirements for licensure under Chapter 24A of Title 43 OCGA, including but not limited to, criminal background checks, education, and training are not locally enforceable. The city may, however, require evidence of licensure and impose similar requirements on any employee, contractor, or other person working on the premises of a massage therapy business who is not a licensed massage therapist.

OCGA also rules out limitation on the location of a massage therapy business relating to its proximity to other massage therapy businesses; the prohibition of off-premises or mobile services by a licensed massage therapist; limitation on engaging licensed massage therapists as contractors or lessees for the performance of massage therapy; or conditions or requirements inconsistent with Insurance Portability and Accountability Act of 1996.

The Georgia Board of Massage Therapy (GBMT) imposes the following minimum requirements for licensure:

- Minimum age is 18 years
- High school diploma, GED or equivalent
- Citizen or permanent resident of the United States
- Satisfactory background check, Georgia Crime Information Center and Federal Bureau of Investigation
- Official verification, passed appropriate certification exam
- Certified transcript for required 500 hours of course & clinical work, for US education
- Foreign education requires credential evaluation report including verification of status of educational entity

Additionally, 24 hours of continuing education is required every two years for license renewal.

City staff is auditing the city's regulations for the practice of massage therapy to identify provisions which contradict or overlap OCGA as well as identify areas where improvements to city policy can promote high standards for the practice of massage therapy while deterring unprofessional and illicit activity.

The ordinance amendment focuses on general operating provisions related to employee and client records as well as differentiating the application requirements, minimum standards, and licensing procedures between a state licensed massage therapist and other employees, contractors, agents & partners associated with the massage establishment. It is still in the rough draft stage.

ARTICLE VII.

MESSAGE OR SPA ESTABLISHMENTS

DIVISION 1. GENERALLY

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Employee means any person who performs any service on the premises of a massage establishment or spa establishment, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, apprentice, trainee, or otherwise. Employee does not include a person who is licensed or provisionally permitted pursuant to the Georgia Massage Therapy Practice Act (O.C.G.A. §§ 43-24A-1, et seq.), or a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.**

Massage apparatus means any manual, mechanical, hydraulic, hydrokinetic, electric, or electronic device or instrument or any device or instrument operated by manual, mechanical, hydraulic, hydrokinetic or electric power, which is utilized by a massage therapist for the purpose of administering a massage.

Massage establishment means any business established for profit which employs or contracts with one or more massage therapists or operates or maintains for profit, one or more massage apparatus and which for good or valuable consideration, offers to the public, facilities and personnel for the administration of massages. This term shall not include hospitals or other professional health establishments, separately licensed as such by the state.

Massage or massage therapy means the manipulation and/or treatment of soft tissues of the body, including but not limited to the use of effleurage, petrissage, pressure, friction, tapotement, kneading, vibration, range of motion stretches, and any other soft tissue manipulation whether manual or by use of massage apparatus, and may include the use of oils, lotions, creams, salt glows, hydrotherapy, heliotherapy, hot packs, and cold packs. This term shall not include diagnosis, the prescribing of drugs or medicines, spinal or other joint manipulations, or any service or procedure for which a license to practice chiropractic, physical therapy, podiatry, or medicine is required by the state.

Massage therapist/practitioner/masseur/masseuse means any person who for good or valuable consideration administers a massage or massage therapy.

Spa establishment means any business established for profit that provides personal services such as body wraps, hydro mineral wraps, body polish, body wash, baths and hydro tub soak.

**Specified criminal activity means any of the following specified crimes:**

- (a) Illegal gambling;**
- (b) Prostitution, keeping a place of prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, sodomy, aggravated sodomy, rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;**
- (c) Obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;**
- (d) Any offense related to any massage establishment or spa establishment, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;**
- (e) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or**
- (f) Any offense in another jurisdiction that, had the predicate act(s) been committed in Georgia, would have constituted any of the foregoing offenses.**

Sec. 18-282. Scope of regulations.

- (a) All licenses issued under this article shall constitute a mere privilege to conduct the business so authorized during the term of the certificate or permit only and subject to all terms and conditions imposed by the city, county and state law.
- (b) Nothing in this article shall be construed to regulate, prevent, or restrict in any manner:
  - (1) Any physician, chiropractor, physical therapist, or similar professional licensed and regulated by or through the state while engaged in the practice of said profession.
  - (2) Any hospital or other professional health care establishment separately licensed as such by the state.
  - (3) Any other individual or entity expressly exempted from local legislation by the laws of the state. (Amd. of 12-2003, § 18-231)

Sec. 18-283. General operating provisions.

- (a) Filing of employee information. It shall be the duty of all persons holding a license under this article to annually file, along with the renewal application for the license, the name of all employees, contractors, agents, and partners, their home address, home telephone number and place of employment. The holder of a license issued under the provisions of this article must additionally report changes in the list of employees with the names and require supplement information for new employees to be filed with the city clerk or its designee within ten days from the date of such change.
- (b) Records of client information to be maintained and subject to inspection. It shall be the duty of any person granted a license under this article to maintain correct and accurate records of the name and address of the persons receiving treatment at such establishment; the type of treatment administered; and the name of the person at the establishment administering the treatment. ~~The records shall be subject to inspection at any time by the city clerk, or its designee, or members of the county police department.~~
- (c) Owner, manager to be on premises. The establishment shall have an owner, manager, or supervisor on premise at all hours the establishment offers massage therapy. If during an inspection there is no owner, manager, or supervisor on premise the establishment must cease operations and close to the public until an owner, manager or supervisor, as listed on the application records, is on-premises.
- (d) Period of time records to be maintained. Records required to be maintained under this article shall be kept for a minimum of two years beyond the expiration date of a license. ~~Records shall be made available to the city clerk, during business hours, at the certificate holder's business location in the city, within ten business days of any such request.~~
- (e) Premises subject to inspection. The establishment shall be subject to inspection at any time during business hours by the city clerk and by members of the county police department, to ensure compliance with this article.
- (f) Clothing. All employees, massage therapist and other persons on the premises, with the exception of the customers, shall be completely clothed at all times when administering a massage. For the purposes of this article completely clothed shall mean having on the upper portion of the body appropriate undergarments and either blouse or shirt which shall cover all the upper body save the arms and neck and shall mean having on the lower body appropriate undergarments plus either pants or skirt, and said pants or skirt must cover from the waist down to a point at least two inches above the knee. All clothes worn in compliance with this article shall be entirely nontransparent.

- (g) Hours of business. No business of a massage therapist shall be engaged in and no place of business shall be open for business except within and between the hours of 7:00 a.m. and 7:00 p.m.
- (h) Signage. A readable sign shall be posted at the main entrance identifying the establishment. Signs shall comply with the sign requirements of the city. No sign shall include the words “spa establishment,” “massage parlor,” “personal service,” or “adult entertainment.”
- (i) Minimum lighting. Minimum lighting shall be provided in accordance with the Uniform Building Code, and additionally, at least one artificial light of not less than 40 watts shall be provided in each enclosed room or booth.
- (j) Beds or mattresses. Ordinary beds or mattresses shall not be permitted in any establishment.
- (k) Compliance with building and safety codes. The establishment, prior to the issuance of the license, must be in compliance with all applicable building and life safety codes, and the building to be occupied must have a valid, current certificate of occupancy.
- (l) Minors. It shall be unlawful for any person under the age of 18 to patronize any massage establishment unless such person carries with him/her at the time of such patronage, a written order directing the treatment to be given by a regularly licensed physician or written permission of the underage person's parent or guardian. It shall be the duty of the holder of a license to determine the age of the person attempting to patronize a massage establishment and to prohibit such patronage by an underage person.
- (m) Unlawful actions of massage practitioner. No massage practitioner, or any of his employees, shall manipulate, fondle or handle the sexual organs or anus of any person.
- (n) Alcoholic beverages. It shall be unlawful for any establishment licensed under this article to engage in the sale of alcoholic beverages or to allow the consumption of alcohol by any person on the premises of said establishment.

Sec. 18-###. Violations; penalties.

Sec. 18-###. Unlawful operation declared nuisance.

Secs. 18-284--18-305. Reserved.

## DIVISION 2. LICENSE

Sec. 18-306. Licenses required; ~~application.~~

- (a) Massage / spa establishment license. In addition to obtaining an occupation tax certificate as referenced in article II of chapter 70, all persons, firms or corporations desiring to engage in the business, trade or profession of a massage / spa establishment shall, before engaging in such trade, business, profession, make application for a license in the form and manner prescribed in this article. ~~The application shall include the information required on all license returns, along with the following additional information:~~
- (b) ~~No license for a massage establishment shall be granted to any person who is not a citizen of the United States or an alien lawfully admitted for permanent residence.~~
  - (1) ~~A letter certifying as to the good moral character of the applicant, signed by three currently qualified and registered voters Gwinnett County of good moral character. Individuals signing such letter must provide their name, address and social security number.~~

- (2) — The applicant must hold and furnish a certified copy of a diploma or certificate of graduation from a state certified school and accredited school of massage therapy. The diploma must be representative of the fact that applicant attended a course of study of not less than 500 credit hours, consisting of a curriculum of anatomy, physical culture, physiology, basic massage theory, technique and clinical practice, approach to massage, allied modalities and disease awareness and other such subjects.
  - (3) — The applicant must furnish a certified statement from the National Certification Board of Therapeutic Massage and Body Work evidencing passage by the applicant thereof of the exam for massage therapists administered by said board.
  - (4) — If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited associated with the operation of the massage therapy establishment.
  - (5) — If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in Gwinnett County.
  - (6) — If the applicant is a corporation, such corporation must be chartered under the laws of the state or authorized by the secretary of state to do business in Georgia.
  - (7) — If the applicant is an individual, the applicant must submit a copy of a valid driver license or a valid I.D. card as reliable proof thereof. Additionally, if the applicant does not reside in Gwinnett County, the applicant must provide the name and address for an agent who resides in Gwinnett County authorized to receive legal process and notices under this article on behalf of the applicant.
- (c) — In addition to obtaining an occupation tax certificate as referenced in article II of chapter 70, all persons, firms or corporations desiring to engage in the business, trade or profession of a spa establishment shall, before engaging in such trade, business, profession, make application for a license in the form and manner prescribed in this article. The application shall include the information required on all license returns, along with the following additional information:
- (1) — No license for a spa establishment shall be granted to any person who is not a citizen of the United States or an alien lawfully admitted for permanent residence.
  - (2) — If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited associated with the operation of the massage therapy establishment.
  - (3) — If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in the county.
  - (4) — If the applicant is a corporation, such corporation must be chartered under the laws of the state or authorized by the secretary of state to do business in the state.
  - (5) — If the applicant is an individual, the applicant must submit a copy of a valid driver license or a valid I.D. card as reliable proof thereof. Additionally, if the applicant does not reside in the

county, the applicant must provide the name and address for an agent who resides in the county authorized to receive legal process and notices under this article on behalf of the applicant.

~~(d) No person, firm or corporation or its officers shall be granted a license for a massage or spa establishment unless it shall appear to the satisfaction of the city clerk or its designee that such person, partners in the firm, officers, directors and shareholders of the corporation have not been convicted or plead guilty or entered a plea of nolo contendere under any federal, state or local law of any crime involving illegal gambling, any felony, criminal trespass, public indecency, disorderly conduct, misdemeanor involving any type of sexual related crime, any theft or violence against person or property, any crime of possession, sale or distribution of illegal drugs, distribution of material depicting nudity or sexual conduct as defined under state law, criminal solicitation to commit any of these listed offenses, attempts to commit any of these listed offenses, for a period of the ten years prior to the date of application for such certificate and has been released from parole or probation. No person, partner or officer under the age of 18 shall be granted a license for massage establishment or spa.~~

~~(Amd. of 12-2003, § 18-232)~~

**(b) Application. An applicant for a massage/spa establishment license shall file in person at the City of Sugar Hill City Hall, a completed application made on a form provided by the city. The application must be executed by the person primarily responsible for the operation of the establishment. If the applicant is a partnership, limited liability company, corporation, or other legal entity, the application must also be executed by an officer, member, partner or shareholder, as applicable. Signatures on the application shall be notarized. An application shall be considered complete when it contains the information and/or items required in Sec. 18-309, accompanied by the annual regulatory fee.**

Sec. 18-307. Regulatory fee; expiration and renewal.

Sec. 18-308. Work permits required.

**(a) Massage/spa establishment work permit required. It shall be unlawful for any person to be an "employee," as defined in this article, of a massage establishment or a spa establishment in the city without a valid massage/spa establishment work permit, except that a person who holds a valid massage/spa establishment license or state license shall not be required to also obtain a massage/spa establishment work permit to be an "employee" at that particular licensed establishment. A person who works at more than one establishment shall obtain a separate work permit for each establishment. No applicant for a massage/spa establishment work permit shall work at a massage establishment or a spa establishment in the city until the applicant receives, and the establishment posts, the employee's work permit as required by this article. A receipt issued by the city is not a valid massage/spa establishment work permit and does not authorize the person to work in a massage establishment or spa establishment.**

**Add work permit requirement for all persons, contractors, employees, etc... not a licensed massage therapist or the holder of a valid provisional permit issued by the Georgia Board of Massage Therapy. Sec. 18-306 (b)(7)**

**Sec. 18-308.1. Application process.**

**Sec. 18-308.2. Minimum standards.**

Prior to the issuance of a license the on-premises owner, manager and employee desiring to engage in the business, trade or profession of massage therapy shall be required to obtain a work permit. (Amd. of 12-2003, § 18-234)

Sec. 18-309. Issuance of license or work permit.

(a) Application requirements. The following information is required for all applications for massage establishment license and work permit.

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
- (2) A signed and sworn affidavit verifying the applicant's lawful presence in the United States as required by O.C.G.A. § 50-36-1. If the applicant is a partnership, limited liability company, corporation, or other legal entity, a signed and sworn affidavit verifying the lawful presence of each person that executes the application on behalf of the applicant.
- (3) A signed and sworn affidavit attesting that the applicant either uses the federal work authorization program in accordance with federal regulations or that the applicant employs fewer than 11 people or otherwise does not fall within the requirements of O.C.G.A. § 36-60-6.
- (4) Current business address and residential mailing address for the applicant.
- (5) The business name, location, legal description, mailing address and phone number of the establishment.
- (6) If the applicant is a sole proprietor, written proof of age, in the form of a driver's license or a picture identification document containing the applicant's date of birth issued by an agency of a state or of the federal government.
- (7) If the applicant is not a sole proprietor, then the partnership, limited liability company, corporation, or other legal entity shall submit a complete list of the legal entity's:
  - a. Officers;
  - b. Directors;
  - c. Partners, members, or shareholders (natural persons) holding a ten percent or greater ownership interest in such legal entity, or if there is no shareholder (natural person) with at least a ten percent interest, the ten shareholders with the greatest ownership interest;
  - d. Employee or agent primarily responsible for operation of the massage or spa establishment; and
  - e. Written proof of age, in the form of a driver's license or a picture identification document containing the applicant's date of birth issued by an agency of a state or of the federal government for each person listed in subparts a. through d. above.
- (8) A statement of whether the applicant or any person listed in response to subsection (b)(7) has been an owner, director, officer, partner, member, or shareholder of a massage establishment or spa establishment that has, in the previous five years (and at a time during which the person was so related to the establishment):
  - a. Been declared by a court of law to be a nuisance; or
  - b. Had its license to operate a massage establishment or a spa establishment revoked.

(9) A statement of whether the applicant or any person listed in response to subsection (b)(7) is a licensed massage therapist or has within the previous five years been arrested for, convicted of, or pleaded guilty or entered a plea of nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each such arrest and/or conviction.

(10) A statement of whether the applicant or a person listed in response to subsection (b)(7) has in the previous 12 months resided with someone who has been an owner, director, officer, partner, member, or shareholder of a massage establishment or spa establishment that has, in the previous five years (and at a time during which the person was so related to the establishment):

a. Been declared by a court of law to be a nuisance; or

b. Had its license to operate a massage establishment or a spa establishment revoked.

(11) If the applicant is a partnership, limited liability company, corporation or other legal entity required to be chartered under the laws of the state or authorized by the secretary of state to do business in the state, such corporation must be chartered under the laws of the state or authorized by the secretary of state to do business in the state and must submit copies of the certificate of organization or incorporation, as applicable, and articles of organization or incorporation, as applicable.

A sworn and notarized statement of a registered agent who is a resident of Gwinnett County, Georgia and at least 18 years of age, required to be designated by a licensee to receive any process, notice or demand required or permitted by law or under this article to be served upon the applicant.

(14) A copy of a \$15,000.00 surety bond, issued by a company approved to issue surety bonds by the Georgia Insurance Commissioner, payable to the city upon the entry of an injunction by the Gwinnett County Superior Court against operation of the applicant's massage establishment or spa establishment due to unlawful operation of same while the applicant held a massage/spa establishment license under this article.

(15) Proof of current liability insurance coverage for bodily injury, property damage, and professional liability for the massage therapy business.

(15) For every person on the premises who offers, or will offer, services for which a license under O.C.G.A. §§ 43-24A-1, et seq. is required, a copy of the state license for each such person as well as a color photograph, no smaller than two inches by two inches, showing the face, neck, and shoulders of each such person; or, if there are none, a statement certifying that no person on the premises offers, or will offer, services for which said person is required to be licensed by the State of Georgia pursuant to O.C.G.A. §§ 43-24A-1, et seq.

The information provided pursuant to this subsection (a) shall be supplemented in writing by certified mail, return receipt requested, to the city within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(b) The information provided by an applicant in connection with an application for a license under this article shall be maintained on a confidential basis, and such information may be disclosed to the public only as required under governing law. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to any required disclosure under the Georgia Open Records Act or other applicable law.

**(ac)** When a license or work permit application is submitted in proper form, including all information and exhibits required herein and accompanied by the correct fees, the application shall be accepted and a review of the application and an inspection and investigation shall be conducted by the city clerk or its designee. The city clerk or its designee shall transmit a copy of the completed application to the county police department. Upon the payment by the applicant of the required fees, the county police department, or its designee, shall cause to be conducted a background investigation of the police record of all employees, contractors, agents and partners who do not currently hold a state license to perform massage therapy the applicant, and shall transmit a summary of the investigation results to the city clerk or his designee.

**(bd)** Upon receipt of the background investigation for all employees without a state license, and completion of review of the application in accordance with the terms of this article, the city clerk or its designee shall act on the application. The city clerk shall deny any application that:

- (1) Fails to meet each of the application requirements specified herein.
- (2) Fails to meet each of the minimum standards specified in Section 18-306 of this article.
- (3) Contains false information in the application or attached documents.

Sec. 18-310. Grounds for revocation and suspension of license.

The license of a massage establishment or spa may be revoked or suspended upon one or more of the following grounds:

- (1) Failure of the holder to maintain initial requirements for obtaining the license.
- (2) The holder is guilty of fraud in the practice of massage, or fraud or deceit in his being issued the license for the practice of massage.
- (3) The holder is engaged in the practice of massage under a false or assumed name, or is impersonating another therapist of a like or different name.
- (4) The holder has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, disorderly conduct, or entered a plea of nolo contendere to any felony.
- (5) Any of the holder's employees, independent contractors or agents has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, or disorderly conduct in connection with the operation of the massage establishment or on or about the premises of the massage establishment.
- (6) Failure of the holder to maintain correct and accurate records as required by this article.
- (7) Failure of the holder to actively supervise and monitor the conduct of the employees, independent contractors, agents, customers, or others on the premises in order to protect the health, safety, and welfare of the general public and the customers.
- (8) The holder, his employees, agents, or independent contractors associated with the establishment have allowed to occur or have engaged in a violation of any part of this article.
- (9) The holder has violated any of the provisions of this article.

Sec. 18-311. Hearings.

No license for a massage or spa establishment shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter provided.

- (1) The city clerk shall provide written notice to the applicant or license holder of his order to deny, suspend or revoke the license. Such written notification shall set forth in reasonable detail the reasons for such action and shall notify the applicant or license holder of the right to appeal under the provisions of this chapter. Any applicant or license holder who is aggrieved or adversely affected by a final action of the city clerk may have a review thereof by appeal to the zoning board of appeals. Such appeal shall be by written petition filed in the office of the city clerk within 15 days after the final order or action of the city clerk and in order to defray administrative costs, must be accompanied by a filing fee of \$500.00. The city clerk, at his discretion, may waive or reduce the filing fee amount if it is determined the fee would create a hardship on the individual filing such appeal. The zoning board of appeals may at the request of the appellant, refund the filing fee by a majority vote.
- (2) A hearing shall be conducted on each appeal within 30 days of the date of filing with the city clerk unless a continuance of such date is agreed to by the appellant and the city clerk. The appellant at such hearing shall have the right to be represented by an attorney, at the expense of the appellant, and to present evidence and cross-examine witnesses. Should the appellant desire an official transcript of the appeal proceedings, then such request must be made at least three days prior to such hearing. The appellant shall have the burden of proof on any such appeal. Before hearing an appeal each member of zoning board of appeals shall sign an affidavit to be part of the record that he or she is not related to or personal friends with any appellant or any owner of the establishment in question in the appeal being considered and that he or she has not financial interest in the outcome of the appeal. Should any member be unable to sign such an affidavit, that member shall not serve on that appeal and the case shall be heard by the remaining members of the zoning board of appeals.
- (3) The findings of the zoning board of appeals shall be forwarded to the city clerk with 15 days after the conclusion of the hearing, and it shall be the duty of the city clerk to notify the appellant and the county police department of the action of the zoning board of appeals.
- (4) The findings of the zoning board of appeals shall not be set aside unless found to be:
  - a. Contrary to law or ordinances;
  - b. Unsupported by an evidence on the records as a whole; or
  - c. So unreasonable as to constitute a gross abuse of discretion.
- (5) The findings of the zoning board of appeals shall be final unless appealed within 30 days of the date of such finding by certiorari to the superior court of the county. An aggrieved party shall have all other remedies provided by law or at equity to all ordinances.

Secs. 18-312--18-335. Reserved.