

DATE: June 30th, 2022
TO: Mayor & Council
FROM: Planning Director
SUBJECT: Municipal Code Amendment
Massage Establishments

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 has conducted a review of 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. Following is draft text intended to replace Article VII. Massage or Spa Establishments in its entirety.

ARTICLE VII.

MASSAGE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 18-281 Definitions.

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, 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 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 shall have the same meaning as the term "massage therapy business" as defined in O.C.G.A. Section 43-24A-3.

Massage or massage therapy shall have the same meaning as the terms are defined in O.C.G.A. Section 43-24A-3.

Massage therapist/practitioner/masseur/masseuse shall have the same meaning as the term "massage therapist" as defined in O.C.G.A. Section 43-24A-3.

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 and permits issued under this article shall constitute a mere privilege to conduct the business so authorized during the term of the license only and subject to all terms and conditions imposed by the city, county state, and federal 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 municipal regulation by the laws of the state.

Sec. 18-283. General operating provisions.

- (a) Filing of employee information. It shall be the duty of all persons holding a massage establishment 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.
- (c) State licensed massage therapist to be on premises. The establishment shall have a state licensed massage therapist on premise at all hours the establishment offers massage therapy. If during an inspection there is no state licensed massage therapist on premise the establishment must cease operations and close to the public until licensed massage therapist, 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.
- (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, and other persons on the premises, with the exception of the customers while receiving a massage, shall be completely clothed at all times. 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 massage establishment 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.
- (i) Minimum lighting. Minimum lighting shall be provided in accordance with the Uniform Building Code, and additionally, at least one artificial light generating a minimum of 600 lumens shall be provided in each enclosed room or booth.
- (j) Beds or mattresses. Beds or mattresses of the kind customarily used or marketed for sleeping 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 in massage establishments. No massage establishment licensee shall permit any criminal activity, including the specified criminal activity identified by this article from taking place in the establishment. Massage establishment licensees are hereby deemed responsible for any criminal activity, including the specified criminal activity identified by this article that takes place in their establishment.
- (n) Alcoholic beverages. It shall be unlawful for any massage 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.
- (o) Any and all massage apparatus, other equipment, and the premises of any massage establishment shall be maintained in a clean and sanitary condition.
- (p) The premises of a massage establishment shall be kept free at all times from the presence of any vermin, insects, termites, and rodents.
- (q) Adequate toilet and lavatory facilities with running water, toilet tissue, soap dispenser with soap or other hand-cleansing materials, sanitary towels or other hand drying devices, waste receptacles, and adequate lighting and ventilation sufficient to remove objectionable odors on the premises of the massage establishment or within reasonable proximity to such massage

establishment when it is located in a space or facilities also used by other businesses shall be maintained at all time such establishment is open for business.

- (r) If the massage establishment maintains a whirlpool bath, sauna, hot tub, spa, steam cabinet, or steam room, adequate and sanitary shower facilities, including soap and sanitary cloth towels and adequate lighting and ventilation, shall be maintained at all times such establishment is open for business.

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

DIVISION 2. LICENSE

Sec. 18-306. Licenses required-

- (a) Massage 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 establishment shall, before engaging in such trade or business, make application for a license in the form and manner prescribed in this article.
- (b) Application. An applicant for a massage 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.

Massage establishment licenses shall be valid for one year from the date of issuance and may be renewed annually, provided that the requirements of this article have been met. The license fee shall be set by resolution of city council.

Sec. 18-308. Work permits required.

Massage establishment work permit required. It shall be unlawful for any person to be an "employee," as defined in this article, of a massage establishment in the city without a valid massage establishment work permit, except that a person who holds a valid, current state massage therapy license or a current, valid provisional state massage therapy permit shall not be required to also obtain a massage establishment work permit to be an "employee" at any licensed massage establishment. An employee who works at more than one establishment shall obtain a separate work permit for each establishment. No applicant for a massage establishment work permit shall work at a massage 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 establishment work permit and does not authorize the person to work in a massage establishment. Massage establishment work permits shall be valid for one year from the date of issuance and may be renewed

annually, provided that the requirements of this article have been met. The license fee shall be set by resolution of city council.

Sec. 18-309. Issuance of massage establishment license.

- (a) Application requirements. The following information is required for all applications for massage establishment licenses.
- (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 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 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 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 any 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 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 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 due to unlawful operation of same while the applicant held a massage establishment license under this article.
- (15) Proof of current liability insurance coverage for bodily injury, property damage, and professional liability for the massage therapy establishment.
- (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.
- (c) When a massage establishment license 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, and shall transmit a summary of the investigation results to the city clerk or its designee.
- (d) Upon receipt of the background investigation for all employees without a current, valid state massage therapy 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.
 - (3) Contains false information in the application or attached documents.

Sec. 18-309.1 Issuance of an employee work permit.

- (a) Application requirements. The following information is required for all applications for work permits for employees of massage establishment licenses that do not hold current, valid state licenses for massage therapy or current, valid state provisional permits.
 - (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.
 - (3) Current business address and residential mailing address for the applicant.
 - (4) The business name, location, legal description, mailing address and phone number of the establishment employing the applicant.

- (5) 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.
- (6) A statement of whether the applicant has within the previous five years been arrested for, convicted of, or pleaded guilty or entered a plea of nolo contendere to any 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.
- (7) A statement of whether the applicant has in the previous 12 months resided with someone who has been an owner, director, officer, partner, member, or shareholder of a massage 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 revoked.

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 work permit 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.
- (c) When a 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 the applicant, and shall transmit a summary of the investigation results to the city clerk or its designee.
- (d) Upon receipt of the background investigation, 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.
 - (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 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 or her 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 or her 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 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 or her 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 City Manager. 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 or her 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.
- (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 both 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 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.

- (3) The findings of the 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.
- (4) The findings of the shall not be set aside unless found to be:
 - a. Contrary to law or ordinances;
 - b. Unsupported by any evidence on the records as a whole; or
 - c. So unreasonable as to constitute a gross abuse of discretion.
- (5) The findings of the 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.

Sec. 18-312. Penalties.

In addition to the forfeiture of any local license or permit and fees for same, violations of this article shall be punishable by a \$1,000 fine, six months incarceration, or both. Each and every violation shall constitute a separate offense. Every day that any violation shall occur shall constitute a separate offense.

Sec. 18-313. Public Nuisance.

Any massage establishment operating without the required message establishment ordinance required by this article is hereby declared a public nuisance. The city may seek any and all legal remedies to abate said nuisance.

Sec. 18-314. Severability.

The sections, paragraphs, sentences, clauses and phrases of this article are severable, and if any phrase, clause, sentence, paragraph or section of this article shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect the remaining clauses, sentences, paragraphs and sections of this article.

Secs. 18-315--18-335. Reserved.