

ARTICLE X. MASSAGE ESTABLISHMENTS¹

Sec. 12-441. Purpose and legislative findings.

The Georgia General Assembly has declared that the practice of massage therapy is an activity affecting the public interest and involving the health, safety, and welfare of the public and that the practice of massage therapy by a person who is not licensed under the Georgia Massage Therapy Practice Act (O.C.G.A. §§ 43-24A-1 et seq.) is a public nuisance, harmful to the public health, safety, and welfare. The city commission agrees with those findings. Furthermore, the city commission finds that, for many massage establishments, the business in fact is sexual conduct or the intimation of sexual conduct, rather than lawful massage therapy. Such establishments offer massage services as a subterfuge for prostitution, masturbation for hire, and other paid sexual contact, which are harmful to the public health, safety, and welfare. There is difficulty and expense in conclusively distinguishing between such establishments and legitimate massage establishments, but one rational distinction is whether the establishment has a relationship with a corporate or franchising hierarchy, which would tend to safeguard against unlawful sexual activities on the massage establishment premises. It is a purpose of this article to impose licensing requirements to help prevent illegal massage, prostitution, and related sex crimes, yet without hindering legitimate massage establishments operating under a business structure with external oversight that serves that purpose. Pursuant to O.C.G.A. § 43-24A-22 (allowing local regulation of massage businesses and of persons not licensed by the state), it is the purpose of this article to regulate the operation of massage establishments and spa establishments, and to regulate employees of such establishments who are not licensed as massage therapists by the state, as an exercise of the city's police power in order to protect the health, safety and general welfare of the citizens of the city.

(Ord. of 08-04-2025)

Sec. 12-442. 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:

Applicant means any person, firm, corporation, or other entity applying for a regulatory fee certificate to practice massage, or operate a massage establishment as defined herein.

Employee means any person over 18 years of age, including a massage therapist, who renders any service in connection with the operation of a massage business and receives compensation from the operator of the business or patrons.

Massage means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the

¹State law reference(s)—Municipal authority to regulate massage therapy businesses, subject to certain limitations, O.C.G.A. §§ 43-24A-30, 43-24A-31.

treatment is provided or some third person on his or her behalf will pay money or give any other consideration or gratuity therefor.

Massage establishment means any commercial establishment having a source of income or compensation derived from the practice of massage, as defined in this section, and which has fixed a place of business where any person, firm, association, or corporation engages in or carries on any of the activities defined as "massage."

Massage therapist means any person who, for any consideration whatsoever, engages in the practice of massage as defined in this section.

Outcall massage service means providing any of the services which constitute massage, as defined in this section, from or at any place or location other than a fixed place of business licensed as such under this article, as a massage establishment.

Patron means any person over 18 years of age who receives a massage under such circumstances that it is reasonably expected that he will pay money or give any other consideration therefor.

Physical therapist means a person licensed by the state to practice physical therapy as defined by O.C.G.A. § 43-33-3(5).

Sexual or genital area means genitals, pubic area, anus, or perineum of any person, or the vulva or breast of a female.

(Code 2000, § 22-401; Ord. of 7-9-2007(1))

State law reference(s)—Statutory definitions pertinent to massage therapy, O.C.G.A. § 43-24A-3.

Sec. 12-443. Occupation tax certificate requirements.

- (a) A business license (occupation tax certificate) is required for any person, firm, corporation or other entity operating a massage establishment. Such applicant must be at least 18 years of age, employ one or more massage therapists meeting the requirements set forth in these regulations, and, if a corporation, be an officer of the corporation which is organized and authorized to do business pursuant to the laws of the state. The applicant to operate a massage establishment must be the owner of the premises wherein the business will be conducted or the holder of a lease thereon for the period to be covered by the license.
- (b) An applicant must be of good moral character and a citizen of the United States or an alien lawfully admitted for permanent residence for at least one year prior to application.

(Code 2000, § 22-402; Ord. of 7-9-2007(1))

Sec. 12-444. Application requirements; investigation; contents.

In addition to the requirements contained in every applicant for an occupational tax certificate to maintain or operate or conduct a massage establishment shall fill an application with the city upon a form provided by the city containing the following information:

- (1) A definition of service to be provided;
- (2) The location, mailing address and all telephone numbers where the business is to be conducted;
- (3) The name and residence of each applicant:
 - a. If the applicant is a corporation, the names and residence addresses of each of the officers and directors of the corporation and of each stockholder owning more than ten percent of the stock

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- of the corporation, and the address of the corporation itself, if difference from the address of the establishment;
- b. If the applicant is a partnership, the names and residence addresses of each of the partners, including limited partners, and the address of the partnership itself, if different from the address of the massage establishment;
- (4) The two previous addresses immediately prior to the present address of the applicant, including stockholders and partners if applicable;
- (5) Individual or partnership applicant's height, weight, color of eyes and hair, and sex;
- (6) Copy of identification such as driver's license or social security card, including stockholders and partners if applicable;
- (7) Any applicant for a business license under this article is required to submit to a police clearance by the Gwinnett County police department or the Hall County sheriff's office consisting of a background investigation, fingerprinting and a portrait photograph. If the applicant is other than a sole proprietor, all partners, officers, managers and stockholders holding a ten percent or more interest in the company shall be subject to the provisions of this article. Each applicant authorizes the city and its agents to secure from any court, law enforcement agency, or other public agency his criminal and civil history and to use such information in determining whether the certificate applied for shall be issued. Each applicant further authorizes the city and its agents to use such information in any public hearing with respect to the certificate applied for, whether before or after the issuance of the certificate. Each applicant waives any rights which he would otherwise have to preclude the city or its agents from obtaining and using such information, and each applicant further waives any liability of the city or its agents from obtaining and using such information. A fee, if required, shall be submitted to the police or sheriff's office for a background check and photograph;
- (8) Business, occupation or employment of the applicant for the three years immediately preceding the date of application, including stockholders and partners if applicable;
- (9) The massage or similar business license history of the applicant; whether such person, in previously operating in this or another city, county or state, has had a business license revoked or suspended, the reason therefor and the business activity or occupation subsequent to such action of suspension or revocation;
- (10) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the crimes and place convicted;
- (11) The name and address of each massage therapist who is or will be employed in the establishment;
- (12) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in subsection (3) of this section, wherein the business or profession of massage is carried on;
- (13) A description of any other business to be operated on the same premises or adjoining premises owned or controlled by the applicant;
- (14) Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit;
- (15) Such other identification and information necessary to discover the truth of the matters required to be set forth in the application;
- (16) The holder of an occupational tax certificate to practice massage or operate a massage establishment shall notify the code enforcement officer of each change in any data required to be furnished by this

article within ten days after such change occurs including the name of any new therapist who must supply verification of certification and qualification consistent with this article.

- (17) The city has not revoked a massage/spa establishment license at the premises within the previous 12 months.
- (18) A statement whether the applicant is the owner of the premises wherein the establishment will be operated or the holder of a lease thereon for the period to be covered by the license. If the applicant is a lease holder, a copy of the lease shall be submitted with the license application.
- (19) 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.
- (20) 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.

(Code 2000, § 22-403; Ord. of 7-9-2007(1); Ord. of 08-07-2023; Ord. of 08-04-2025)

Sec. 12-444.5 Number of establishments/Distance regulation.

After August 4, 2025, there shall be no more than four massage therapy businesses per 10,000 persons living within the city limits based on the most current U.S. Census. Further, there shall be a 150-foot buffer from any massage therapy business to any residentially zoned property from the front door of the structure where massage business occurs to the nearest parcel boundary line of any residentially zoned property as measured by a straight line on the ground.

Upon application for a massage license and/or occupation tax placard, the applicant will provide to the city clerk a survey by a registered surveyor as measured from the property line demonstrating that the establishment is not within a 150-foot radius of a residentially zoned property.

The city commission recognizes that upon the adoption and effective date of this section, there appear to be active massage therapy businesses with physical facilities in existence in the city limits. Without waiving any illegality of such physically existing structures based on zoning or other laws and without de facto or specifically granting any "grandfathered," "vested," or "legal non-conforming" (as those terms are defined in state zoning law) status by virtue of adoption of this purely regulatory section, it is the intention of the city commission to allow the continued operation of the existing massage therapy businesses provided the same otherwise comply with all other applicable laws and regulations of the city and state.

Any licensed massage therapy businesses legally operating prior to August 4, 2025 shall be exempt from the distance and population cap regulations of this section until the licensee of such massage therapy business or a new licensee to whom the license is legally transferred as provided no longer holds a valid massage therapy license from the City of Buford. Any massage/spa establishment lawfully operating prior to the effective date of this provision shall not be subject to this restriction so long as it continues to properly apply for, and receive, a renewal license after each expiration period. Any transfer, sale or relocation of the massage/spa establishment shall void the current license, except that upon the death or incapacity of a licensee or a co-licensee of a massage/spa establishment, any heir or devisee of the deceased licensee, or any guardian of an heir or devisee of a deceased licensee, may continue the business of a massage/spa establishment for a reasonable period of time not to exceed

60 days to allow for an orderly transfer of the license. For the purpose of this provision, if the business is a corporation or LLC, a sale or transfer of at least 50 percent of a stock of a corporation or 50 percent of the membership certificates of an LLC, shall constitute transfer of a massage/spa establishment.

(Ord. of 08-04-2025)

Sec. 12-445. Inspection authorized.

A code enforcement officer or his/her authorized representative, shall and the police may, from time to time, make inspections during regular business hours of each massage business establishment for the purposes of determining compliance with the provisions of this article. It shall be unlawful for any permittee or licensee hereunder to fail to allow the inspection officer or police officer access to the premises or to hinder the officer in any manner.

(Code 2000, § 22-404; Ord. of 7-9-2007(1))

Sec. 12-446. Operating requirements; unlawful acts.

- (a) The premises shall be kept clean, neat, and sanitary and shall comply with all sanitary and health requirements of the state, Gwinnett County/Hall County, and the city.
- (b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.
- (c) Ordinary beds or mattresses shall not be permitted in any establishment.
- (d) All employees, massage therapists, 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 subsection, the term "completely clothed" means having, on the upper portion of the body, appropriate undergarments and either a blouse or shirt which shall cover all the upper body save the arms and neck, and having, on the lower body, appropriate undergarments plus either pants or skirt which must cover from the waist down to a point at least two inches above the knee. Clothes must be completely opaque.
- (e) During business hours, it is unlawful to block or obstruct the view into any establishment by tinting or covering windows and/or doors as to prevent an open view into the premises.
- (f) No alcoholic beverages shall be sold or provided to customers on the premises.
- (g) It is unlawful for any person in a massage establishment to place his or her hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage a sexual or genital area, as defined in section 12-442, of any person or to act in a manner intended to arouse, appeal to, or gratify the lust or passions or sexual desires.
- (h) It is unlawful for any person under 18 years of age to patronize any massage establishment unless such person carries with him 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.
- (i) It is unlawful for any person or firm to provide "outcall" massage in any hotel, motel, roominghouse, or similar place offering short term lodging to the public.
- (j) It shall be unlawful for any person owning, operating, or managing a massage establishment to knowingly cause, allow, or permit in or about such massage establishment any agent, employee, or other person under his supervision or control to perform any acts prohibited under this section.

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- (k) It is specifically declared that any violation of this article shall constitute a nuisance, the same being subject to abatement in the municipal court of the city. It shall be unlawful for any person to maintain or permit the existence of any nuisance on any property within the city.
 - (l) Any provision of state law notwithstanding, a violation of the provisions of this article shall be further punishable as provided in section 1-11.

(Code 2000, § 22-405; Ord. of 7-9-2007(1))

Sec. 12-447. Hours of operation.

No massage therapist shall engage in such business or profession except between the hours of 8:00 a.m. and 10:00 p.m.; nor shall any operator of a massage establishment or business operate the same except within and between those hours. Violations of this section shall be considered an offense under this Code, and persons found guilty of such violations shall be punishable within the general limits of punishments as provided by this Code.

(Code 2000, § 22-406; Ord. of 7-9-2007(1))

Sec. 12-448. Exemptions.

This article shall not apply to the following individuals while engaged in the personal performance of the duties of their respective profession:

- (1) Physicians, surgeons, chiropractors, osteopaths, and physical therapists who are duly licensed to practice their respective profession in the state.
- (2) Nurses who are registered under the laws of the state.
- (3) Barbers and beauticians who are duly licensed under laws of the state, except that this exemption shall apply solely to the massaging of the neck, face, scalp, and hair of the customer or client for cosmetic or beautifying purposes.
- (4) Physical therapists licensed under the laws of the state.

(Code 2000, § 22-407; Ord. of 7-9-2007(1))

Sec. 12-449. Posting of occupation tax certificate; transfer of certificate; expiration and renewal.

- (a) Every person obtaining a regulatory fee certificate under this article shall display such certificate in a prominent place.
- (b) No regulatory fee certificate, whether for a massage establishment or a massage therapist, shall be transferable or assignable from person to person or from location to location.
- (c) All licenses granted hereunder shall expire on December 31 of each year. Licensees who desire to renew their license shall file application, with the requisite fee heretofore provided, with the city manager or his designee for renewal for the ensuing year on the form provided on or by December 31. Any establishment that has previously failed to complete the subject application set forth in section 12-444 shall do so and any establishment that previously completed such application shall update any new information. All licenses granted hereunder shall be for the calendar year.

(Code 2000, § 22-408; Ord. of 7-9-2007(1))

Sec. 12-450. Revocation or suspension of occupational tax certificate.

An occupational tax certificate granted hereunder shall be subject to revocation. Whenever, in the opinion of the city manager, there is cause to revoke this certificate, a written notice of intention to revoke the certificate shall be furnished to the holder thereof. A hearing will be scheduled wherein the applicant may present his/her case before the city manager. After the hearing, the city manager may revoke this certificate if, in his/her discretion, revocation is in the best interest of the health, safety, and welfare of the city. The aggrieved party may appeal such order to the zoning board of appeals of the city as further set forth in the city zoning ordinance.

- (1) The regulatory fee certificate of massage establishment may be revoked upon one or more of the following grounds (but is not limited to such grounds):
 - a. Failure of the applicant to maintain initial qualification for obtaining the license;
 - b. The applicant is guilty of employing any person who is not a licensed massage therapist and allowing or permitting such person to administer massage in said establishment;
 - c. The premises in which the massage establishment is located are in violation of any of the federal, state, county, or municipal laws designed for the health, protection, and safety of the occupants;
 - d. The premises are in violation of the building codes;
 - e. The applicant or therapist is guilty of fraud in the practice of massage, or fraud or deceit in obtaining a regulatory fee certificate to practice massage therapy;
 - f. The applicant or therapist is engaged in the practice of massage therapy under a false or assumed name, or is impersonating another practitioner of a like or different name;
 - g. The applicant or therapist is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent as to incapacitate such person to the extent that he is unable to perform his or her duties;
 - h. The applicant or therapist is guilty of fraudulent, false, misleading, or deceptive advertising or practices;
 - i. The original application, or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein;
 - j. The applicant or any of his employees or agents has been convicted or has pled guilty or nolo contendere to a felony or to a misdemeanor involving moral turpitude, or to any charge of a lascivious nature;
 - k. Failure of the applicant to actively supervise or monitor the conduct of the employees, customers, and others on the premises in order to protect the health, safety, and well-being of the general public and the customers;
 - l. The applicant or his employees have allowed to occur or have engaged in a violation of any part of this article.
- (2) A massage establishment operator who has his or her or its occupation tax certificate revoked shall be disqualified from reapplying for such a certificate for 12 months immediately following revocation.

(Code 2000, § 22-409; Ord. of 7-9-2007(1))

Sec. 12-451. Responsibility of owner or operator.

It shall be the responsibility of the owner or operator of any service described in this article as "massage" to ensure that each person employed as a masseuse shall have in his or her possession a valid permit.

(Code 2000, § 22-410; Ord. of 7-9-2007(1))

Sec. 12-452. Record of treatment to be kept.

- (a) It shall be the duty of any person granted a license under this article to maintain correct and accurate records of the names and addresses of the persons receiving treatment, the type of accurate records of the names and addresses of the persons receiving treatment, the type of treatment administered, and the name of the person administering this treatment. These records shall be subject to inspection any time by the city code enforcement officer. Records shall be kept for a minimum of three years.
- (b) No massage therapy shall be performed by any massage practitioner in the home of any client or in any place except for the place of business of a licensee hereunder, unless a written memorandum is first made in a log or record kept at the place of business for the purpose of recording consecutively the date, time of treatment, place of treatment, name and address of person to receive treatment, type of treatment to be received, name of person to render treatment, time the practitioner leaves to render treatment, and the fee charged. The practitioner shall record the time each treatment was completed immediately upon his return to the place of business.

(Code 2000, § 22-411; Ord. of 7-9-2007(1))

Sec. 12-453. Compliance.

It is unlawful for any person or firm to engage in, conduct, or carry on within the city, any business as a massage establishment or to act as a massage technician without first obtaining and possessing a valid permit issued pursuant to this article, or without complying with all regulations contained in this chapter.

(Code 2000, § 22-412; Ord. of 7-9-2007(1))

Secs. 12-454—12-474. Reserved.