

AN ORDINANCE AMENDING CHAPTER 22, ARTICLE III OF THE CODE OF THE CITY OF JOHNS CREEK RELATING TO MASSAGE ESTABLISHMENTS AND SPAS; AND FOR OTHER PURPOSES

WHEREAS, the City of Johns Creek (“City”) has heretofore adopted an ordinance for Massage Establishments and Spas, codified as Chapter 22, Article III, Sec. 22-46 through Sec. 22-56 of The Code of the City of Johns Creek (“Code”); and

WHEREAS, the Mayor and City Council have determined that it is appropriate to amend those regulations to improve the City’s regulatory and enforcement capabilities and to maintain consistency with the Georgia Massage Therapy Practice Act;

THEREFORE, the Council of the City of Johns Creek hereby ordains that Chapter 22, Article III of the Code is hereby amended by amending the current provisions contained in Sec. 22-46 through 22-85 of the Code to read as follows:

ARTICLE III. MASSAGE ESTABLISHMENTS AND SPAS

- Sec. 22-46. Purpose.
- Sec. 22-47. Definitions.
- Sec. 22-48. Penalty.
- Sec. 22-49. Scope of regulations.
- Sec. 22-50. Massage/spa establishment license required; application.
- Sec. 22-51. Regulatory fee; expiration.
- Sec. 22-52. Employee work permits required.
- Sec. 22-53. General operating provisions.
- Sec. 22-54. Inspection.
- Sec. 22-55. Revocation of license or work permit.
- Sec. 22-56. Hearing; license denial, revocation, appeal.
- Sec. 22-57. Remedies.
- Secs. 22-58—22-85. Reserved.

Sec. 22-46. 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 council agrees with those findings. Furthermore, the city council 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.

Sec. 22-47. 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 legal entity applying for a license to operate a massage establishment or spa establishment, as defined herein, or a person applying for a work permit, as provided for herein.

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.

Hearing officer means an attorney, not an employee of the city, who is licensed to practice law in Georgia, and retained to serve as an independent tribunal to conduct hearings under this article.

Massage 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, a system of structured touch, pressure, movement, and holding to the soft tissue of the body, and any other soft tissue manipulation whether manual or by use of massage apparatus, and may include the use of water, oils, lotions, creams, lubricants, salt glows or scrubs, hydrotherapy, heliotherapy, hot packs, cold packs or other topical preparations. This term shall not include diagnosis, the prescribing of drugs or medicines, spinal or other joint manipulations, or any service or procedure when performed by a person who is licensed by the state to practice chiropractic, physical therapy, podiatry or medicine. This term shall not include touching of the scalp or ears while providing a haircut, or touching of the hands or feet while providing a manicure or pedicure, by a person licensed by the Georgia State Board of Cosmetology.

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 for the purpose of administering a massage.

Massage establishment means a commercial establishment where any person offers or provides massage. This term shall not include hospitals or other professional health care establishments separately licensed as such by the state.

Premises means the real property, or portion thereof, upon which the massage establishment or spa establishment is located including, but not limited to, the establishment and the grounds, private walkways, and parking lots and/or parking garages under the ownership or control of the establishment.

Spa establishment means a commercial establishment that offers or engages in personal services that call for the patron to disrobe, such as body wraps, hydro mineral wraps, body polish, body wash, baths and hydro tub soak. This term shall not include hospitals or other professional health care establishments separately licensed as such by the state.

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. 22-48. Penalty.

Any person violating any of the provisions of this article shall be punished as provided in section 1-7. Nothing in this section and no action taken hereunder shall be held to exclude such other civil, criminal, or administrative proceedings as may be authorized by other provisions of this Code or any of the laws in force in the City or to exempt anyone violating this code or any part of said laws from any penalty which may be incurred.

Sec. 22-49. Scope of regulations.

- (a) All licenses and work permits issued under this article shall constitute a mere privilege to operate or work at the establishment specified in the license or work permit during the term of the license or work permit only, and shall be subject to all terms and conditions imposed by the city, county and state.
- (b) This article shall not be enforced against:
 - (1) Any natural person who is a physician, chiropractor, physical therapist, massage therapist, or similar professional licensed and regulated by or through the state while engaged in the practice of the profession for which the person is licensed by the state;
 - (2) Any hospital or other professional health care establishment, including a physician's, physical therapist's, or chiropractor's office, separately licensed as such by the state; or
 - (3) Any other individual or entity expressly exempted from local legislation by the laws of the state.
- (c) Licenses and work permits issued before the adoption of this article shall continue in effect for their original terms, subject to the regulations herein, including the provisions in Sec. 22-55 as amended.
- (d) All massage establishments, spa establishments, and their employees shall comply with this article upon its adoption, including those that hold a license or a work permit issued before the adoption of this article.
- (e) The city manager may exempt a massage establishment or a spa establishment and its employees from the licensing requirements of sections 22-50, 22-51, and 22-52 for a specified calendar year. An exemption under this subsection expires on December 31 of the year for which it was granted. Upon the expiration of an exemption, the establishment and its employees are subject to all requirements of sections 22-50, 22-51, and 22-52. Any request for an exemption shall be submitted in writing to the city manager and is automatically rejected unless the city manager grants the exemption. An exemption, if granted by the city manager, shall be in writing and shall be based upon evaluation of the request according to the following standards:
 - (1) Whether the establishment is part of a chain that operates in multiple locations under common ownership, franchise agreements, or a similar arrangement that involves centralized control or corporate supervision;

- (2) Whether all persons who provide services involving physical contact with customers at the establishment hold state licenses;
- (3) The establishment's, its owners', and its managers' histories relative to compliance with massage establishment or spa establishment licensing requirements;
- (4) Whether the location used by the establishment has been free from association with unlawful activity for the last twelve (12) months; and
- (5) Whether the establishment is operated by a person who has been continually licensed pursuant to the Georgia Massage Therapy Practice Act for at least four (4) years.

Sec. 22-50. Massage/spa establishment license required; application.

- (a) *Massage/spa establishment license required.* It shall be unlawful for any person or legal entity to operate a massage establishment or a spa establishment in the city without a valid massage/spa establishment license. This license requirement is in addition to obtaining an occupation tax certificate pursuant to chapter 50, article V, pertaining to taxation. No more than twenty-four (24) massage/spa establishment licenses may be in effect at a time. The city shall not issue a massage/spa establishment license that would result in more than 24 such establishments being licensed to operate simultaneously.
- (b) *Application.* An applicant for a massage/spa establishment license shall file in person at the Johns Creek City Hall, Revenue Division 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 this subsection (b), accompanied by the annual regulatory fee:
 - (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) 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 (5) 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) has within the previous five (5) 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 twelve (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 (5) 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.
- (12) A sworn and notarized statement of a registered agent who is a resident of Fulton 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.
- (13) 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.
- (14) A copy of a \$15,000 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 Fulton 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) 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 2 inches by 2 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 (b) shall be supplemented in writing by certified mail, return receipt requested, to the Johns Creek Revenue Division within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (c) 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.
- (d) *Issuance of license.* Upon the filing of a completed massage/spa establishment license application, the city shall cause to be conducted a criminal background investigation of the applicant and shall transmit a summary of the investigation results to the city manager or his or her designee. Within sixty (60) days of the filing of the application, the city manager or his or her designee shall either issue a license to the applicant or issue a written notice of intent to deny the license to the applicant. The city manager or his or her designee shall issue the license unless:
- (1) The applicant or a person listed in response to subsection (b)(7) is less than twenty-one (21) years of age.
 - (2) The applicant has failed to provide information required by this article for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The applicant is neither the owner of the premises wherein the establishment will be operated, nor the holder of a lease thereon for the period to be covered by the license.
 - (4) The annual regulatory fee required by this article has not been paid.
 - (5) The establishment is not in compliance with the location requirements of this article or of any part of the Code. This provision shall not be grounds to deny a license to a massage establishment or spa establishment that was, in all respects, lawfully operating at the premises prior to the adoption of the location requirements of this article and that has continued to lawfully operate at the premises.
 - (6) The city has revoked a massage/spa establishment license at the premises within the previous twelve (12) months.
 - (7) The applicant or a 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 (5) 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.
 - (8) The applicant or a person listed in response to subsection (b)(7) has within the previous five (5) years been convicted of, or pleaded guilty or entered a plea of nolo contendere to, a specified criminal activity, as defined in this article.
 - (9) The establishment does not comply with all applicable building, health, and life safety codes, or the building to be occupied does not have a valid, current certificate of occupancy.
 - (10) The applicant or a person listed in response to subsection (b)(7) has in the previous twelve (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 (5) 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) The license, if issued, would result in more massage/spa establishment licenses being in effect than authorized under subsection (a).
- (12) The applicant is a partnership, limited liability company, corporation or other legal entity that is required to be chartered under the laws of the state or authorized by the secretary of state to do business in the state, but is not so chartered or authorized.
- (e) A license, if issued, shall be issued in the name of the applicant. The license shall be posted in a conspicuous place at or near the entrance to the establishment so that it may be read at any time that the establishment is occupied by patrons or is open to the public.
- (f) Massage establishments and spa establishments shall post each employee's work permit issued by the city in a conspicuous place at or near the entrance to the establishment so that it may be read at any time that the establishment is occupied by patrons or is open to the public.

Sec. 22-51. Regulatory fee; expiration.

- (a) There shall be an annual regulatory fee, consisting of a nonrefundable investigative fee and a license fee, for each massage and spa establishment licensed within the city. The investigative and license fees shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council. The full regulatory fee shall be paid with the license application and shall not be prorated under any circumstances. If the applicant withdraws the application or the license is denied, the applicant shall be refunded the full license fee paid. No refund shall be allowed once the license has been issued.
- (b) All licenses granted hereunder shall be for the calendar year and expire on December 31 of each year. Each subsequent application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held. Existing licensees shall file applications by November 1 of each year for the following license year. Applications received after November 1 shall be subject to a ten percent late fee.
- (c) No license issued pursuant to this article shall be transferable.

Sec. 22-52. Employee 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 who is listed in response to section 22-50(b)(7)a.-c. in relation to a valid massage/spa establishment 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.
- (b) *Application.* An applicant for a massage/spa establishment work permit shall file in person at the Johns Creek City Hall, Revenue Division a completed application made on a form provided by the city. The application must be signed and notarized. Applicants shall make themselves available for photographing. An application shall be considered complete when it contains the information and/or items required in this subsection (b), accompanied by the work permit fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
- (2) Current business address or another mailing address for the applicant.
- (3) 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.
- (4) 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.
- (5) The name and address of the massage establishment or spa establishment for which the applicant seeks to obtain the work permit.
- (6) A statement of whether the applicant has been an owner, director, officer, partner, member, or shareholder of a massage establishment or spa establishment that has, in the previous five (5) 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.
- (7) A statement of whether the applicant has within the previous five (5) 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.

The information provided pursuant to this subsection (b) shall be supplemented in writing by certified mail, return receipt requested, to the Johns Creek Revenue Division within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (c) 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 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.
- (d) *Issuance of work permit.* Upon the filing of a completed massage/spa establishment work permit application, the city shall cause to be conducted a criminal background investigation of the applicant and shall transmit a summary of the investigation results to the city manager or his or her designee. Within thirty (30) days of the filing of a completed massage/spa establishment work permit application, the city manager or his or her designee shall either issue a work permit to the applicant or issue a written notice of intent to deny the work permit to the applicant. The city manager or his or her designee shall issue the work permit unless:
 - (1) The applicant is less than eighteen (18) years of age.
 - (2) The applicant has failed to provide information required by this article for issuance of a work permit or has falsely answered a question or request for information on the application form.
 - (3) The work permit fee required by this article has not been paid.
 - (4) The establishment for which the applicant seeks a work permit does not have a valid massage/spa establishment license from the city.
 - (5) The applicant has been an owner, director, officer, partner, member, or shareholder of a massage establishment or spa establishment that has, in the previous five (5) 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.

- (6) The applicant has within the previous five (5) years been convicted of, or pleaded guilty or entered a plea of nolo contendere to, a specified criminal activity, as defined in this article.
- (e) The work permit, if issued, will be valid for a period of one year from the date it is issued. Replacement and additional work permit(s) shall be issued upon payment of one-half of the fee charged for a work permit and will expire the same date as the then-current work permit. A massage establishment or spa establishment employee shall provide the employee's work permit to the establishment for which it was issued to be posted on the premises pursuant to this article.
- (f) The city manager or his or her designee shall issue a written notice of intent to revoke an employee's work permit, following notice and hearing pursuant to this article, and demand its return if the employee has violated the provisions of this article, any state law or applicable local ordinance.
- (g) It shall be unlawful for an employee whose work permit has been revoked to refuse to return the work permit to the Johns Creek Revenue Division or to alter, conceal, deface, or destroy the work permit.
- (h) The work permit fee for a massage/spa establishment work permit shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

Sec. 22-53. General operating provisions.

- (a) Massage establishments and spa establishments shall keep on file, on the premises of the establishment, a list of all persons who perform any service on the premises of the establishment, their home addresses and home or mobile telephone numbers, their duties and services performed for the massage or spa establishment, whether such person has a massage/spa establishment work permit issued by the city, and whether such person has a license or provisional permit issued by the state pursuant to the Georgia Massage Therapy Practice Act. The holder of a massage/spa establishment license must also keep on file, on the premises of the establishment, a copy of the establishment's two most-recent license applications.
- (b) Massage establishments and spa establishments shall maintain correct and accurate records of each instance that a service is provided, the type of service provided, and the name of the person at the establishment who provided the service. The records shall be subject to inspection by the city manager, the chief of police, and their designees during those times when the establishment is occupied by patrons or is open to the public.
- (c) No massage establishment or spa establishment shall allow any person required to have any state mandated licenses, or a massage/spa establishment work permit pursuant to this article, to perform any service on the premises until such person has procured such license or work permit. Licensees and all managers and/or supervisors of any massage or spa establishment are required by this article to inspect and verify that each person who performs services on the premises who is required to have a valid state license or city work permit, has the required license or work permit on the establishment premises at all times, and failure to do so shall be a violation of this article. No person on the premises engaging in massage for which a state license is required shall refuse to provide a copy of the person's state massage therapy license upon request by any customer or city official.
- (d) Each massage establishment and spa establishment shall have an owner, manager or supervisor on the premises at all hours that the establishment is occupied by patrons or is open to the public. If during an inspection there is no owner, manager or supervisor on the premises, the establishment must cease operations and close until an owner, manager or supervisor is on the premises.
- (e) Records required to be maintained under this article shall be kept for a minimum of two years. Records shall be made available to the city manager or his or her designee, during business hours, at the establishment's business location in the city.

- (f) All employees and other persons on the premises, with the exception of customers receiving a massage from a state licensed massage therapist, shall be completely clothed. For the purposes of this article, the term "completely clothed" means 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 non-transparent.
- (g) No customer receiving a massage from a state licensed massage therapist shall expose his or her genitals, pubic area, anus, or the areola or nipple of the female breast to another person on the premises of a massage establishment or spa establishment. The prohibition against a customer exposing the areola or nipple of the female breast while receiving a massage from a state licensed massage therapist shall not apply when the massage therapist is certified to provide oncology massage or manual lymphatic drainage massage.
- (h) No massage establishment or spa establishment shall be or remain open for business between the hours of 9:00 p.m. and 7:00 a.m. No person shall be or remain inside a massage establishment or spa establishment between the hours of 10:00 p.m. and 6:00 a.m. No massage establishment or spa establishment shall hold itself out as open at a time that the establishment is prohibited, under this subsection, from being open for business.
- (i) A readable sign shall be posted at the main entrance identifying the establishment. Signs shall comply with the sign requirements of this Code.
- (j) Minimum lighting shall be provided in accordance with the building code, as adopted by the city council, and at least one artificial light of not less than 40 watts (or equivalent illumination) shall be provided in each enclosed room or booth.
- (k) Ordinary beds or mattresses shall not be permitted in any massage establishment or spa establishment.
- (l) No massage establishment or spa establishment shall knowingly or recklessly allow any minor (*i.e.*, a person under the age of 18) to be or remain inside the massage establishment or spa establishment unless the minor is accompanied by his or her parent, legal guardian, or a person who is at least 21 years of age and has been entrusted with the minor by the minor's parent or legal guardian.
- (m) No person shall knowingly or recklessly touch, manipulate, fondle, or handle in any manner the sexual organs, genital area, or anus of any other person on the premises of a massage establishment or spa establishment.
- (n) It shall be unlawful to establish a massage establishment or a spa establishment in the city, unless said establishment is at least 300 feet from Georgia Highway 141 and at least 300 feet from any parcel occupied by a house of worship, public or private elementary or secondary school, public park, state-licensed day care facility, or any residence. For the purpose of this subsection, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest point on a boundary line of the massage establishment or spa establishment parcel to the closest point on the Georgia Highway 141 right-of-way or to the closest point on a boundary line of any parcel containing a house of worship, public or private elementary or secondary school, public park, or residence.
- (o) Massage establishments and spa establishments shall post and maintain a copy of the human trafficking notice available on the Georgia Bureau of Investigation internet website (as per O.C.G.A. § 16-5-47) in each employee breakroom or kitchen for the establishment and in another conspicuous location in clear view of the employees where similar notices are customarily posted.
- (p) It shall be unlawful to operate a massage establishment or spa establishment with storefront windows that have material and glazing applied or affixed that reduces light transmission through the windows to less than 32%, plus or minus 3 percent, or increase light reflectance to more than 20 percent.

- (q) Massage establishments, spa establishments, and their employees shall ensure that storefront windows are not blocked by curtains, blinds, or any other screening material during those times when the establishment is occupied by patrons or is open to the public.

Sec. 22-54. Inspection.

Massage establishments, spa establishments, and their employees shall permit the city manager, chief of police, and their designees or agents to inspect, from time to time on an occasional basis, any portion of the establishment premises where patrons are permitted, for the purpose of ensuring compliance with the regulations of this article, during those times when the establishment is occupied by any patron or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.

Sec. 22-55. Revocation of license or work permit.

- (a) *Revocation for specific violations.* The city manager shall issue a written notice of intent to revoke a massage/spa establishment license or a massage/spa establishment work permit, as applicable, if:
- (1) The licensee or work permit holder has failed to maintain the qualifications for holding a license or work permit;
 - (2) The licensee or work permit holder has recklessly given false information in the application for the license or the employee work permit or has failed to supplement the application information as required by section 22-50(b) or section 22-52(b) after a change of circumstances that rendered the information originally submitted false or incomplete;
 - (3) The licensee or work permit holder has failed to maintain correct and accurate records as required by this article;
 - (4) The licensee or work permit holder has engaged in or recklessly allowed possession, use, or sale of controlled substances on the premises of the establishment;
 - (5) The licensee or work permit holder has engaged in or recklessly allowed sodomy, aggravated sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, or disorderly conduct to occur in or on the premises of the establishment;
 - (6) The licensee or work permit holder has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the establishment;
 - (7) The licensee or work permit holder has violated section 22-53(c);
 - (8) The licensee or work permit holder has knowingly or recklessly allowed any minor (*i.e.*, a person under the age of 18) to be or remain inside the massage establishment or spa establishment unless the minor is accompanied by his or her parent, legal guardian, or a person who is at least 21 years of age and has been entrusted with the minor by the minor's parent or legal guardian; or
 - (9) The licensee or work permit holder has recklessly allowed three (3) or more violations of this article within a twelve-month period.
- (b) When a notice of intent to revoke a license or employee work permit has been issued, the licensee, or the work permit holder, as the case may be, shall not apply for or be issued any new license or permit under Johns Creek City Code Chapter 6, Chapter 50, or Chapter 22, Articles I through VII, until such notice has been withdrawn or, if revocation has become effective, until two (2) years after the effective date of revocation.

- (c) When any person listed on a massage/spa establishment license application, any employee of the establishment, or any person who performs massage at the establishment, is arrested for unlawful sexual conduct of any kind alleged to have occurred at the massage establishment or spa establishment, no person listed on the establishment's license application and no employee of the establishment may apply for or be issued any new license or permit for that location under Johns Creek City Code Chapter 6, Chapter 50, or Chapter 22, Articles I through VII, until the arrestee is cleared or until ninety (90) days following the arrest have passed, whichever occurs sooner.

Sec. 22-56. Hearing; license denial, revocation; appeal.

- (a) When the city manager issues a written notice of intent to deny or revoke a license or employee work permit, the city manager shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee/work permit holder (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Johns Creek Revenue Division for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the city manager, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the city manager's written notice shall become a final denial or revocation, as the case may be, on the eleventh (11th) day after it is issued.
- (b) If the respondent does make a written request for a hearing within said ten (10) days, then the city manager or his or her designee shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The city shall provide for the hearing to be transcribed.
- (c) At the hearing, the respondent shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the city's witnesses. The respondent shall bear the burden of proving entitlement to the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this article, to the respondent within five (5) days after the hearing.
- (d) If the decision is to deny or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the city manager to immediately withdraw the intent to deny or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the city manager shall contemporaneously therewith issue the license or work permit to the applicant.
- (e) If any court action challenging a licensing or work permitting decision is initiated, the city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings.

Sec. 22-57. Remedies.

- (a) Any premises, building, dwelling, or other structure in which a massage establishment or spa establishment is operated or maintained in violation of this article is declared to be a public nuisance, harmful to the public health, safety, and welfare. The city's legal counsel may bring an action in the

Superior Court of Fulton County to restrain, prohibit, and/or enjoin the use of such premises as a massage establishment or spa establishment in the Superior Court of Fulton County.

- (b) The operation of a massage establishment or spa establishment by a partnership, limited liability company, corporation, or other legal entity in violation of this article is declared to be a public nuisance, harmful to the public health, safety, and welfare. The city's legal counsel may bring an action in the Superior Court of Fulton County to restrain, prohibit, and/or enjoin such operation of a massage establishment or spa establishment.
- (c) The operation of a massage establishment by a person in violation of this article is declared to be a public nuisance, harmful to the public health, safety, and welfare. The city's legal counsel may bring an action in the Superior Court of Fulton County to restrain, prohibit, and/or enjoin such operation of a massage establishment or spa establishment.
- (d) It shall not be necessary, in order to obtain an injunction under this section, to allege or prove that there is no adequate remedy at law or to allege or prove any special injury.
- (e) If the court declares a massage establishment or spa establishment to be a nuisance, or if the court issues an injunction against a massage establishment or spa establishment pursuant to this article, the city shall be entitled, on motion, to recover its reasonable attorneys' fees and costs incurred in bringing the action.

Secs. 22-58—22-85. Reserved.

Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

This Ordinance shall take effect upon adoption.

APPROVED AND ADOPTED this the _____ day of _____, 2014.

Approved:

Michael E. Bodker, Mayor

Attest:

Approved as to Form and Content:

Joan C. Jones, City Clerk

Richard A. Carothers, Interim City Attorney

(Seal)