

AN ORDINANCE
TO AMEND THE CITY OF DACULA CODE OF ORDINANCES
TO UPDATE RULES AND REGULATIONS APPLICABLE TO
MASSAGE THERAPISTS

WHEREAS, the City's current ordinance regulating Massage Therapists was first adopted in 1993 and is in need of review and update; and

WHEREAS, it is in the best interest of the health, safety and welfare of the citizens of the City of Dacula to update the City Code and regulations pertaining to Massage Therapists;

NOW THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DACULA HEREBY ORDAINS that the City code be amended as follows:

SECTION 1

The existing City Code Chapter 12, Section 11 - Massage Parlors is deleted and the following Chapter 12, Section 11 – Massage Therapists is substituted in its place:

Sec. 12-431. Purpose.

- (a) The purpose of this section is to provide for local licensing and regulation of massage therapy businesses, pursuant to the authority to regulate for the general health, safety and welfare as provided in the Charter Section 1.13(41) and O.C.G.A. §§ 48-13-9(b)(17) and 43-24A-1 et seq., as amended.
- (b) A license issued pursuant to this division is a privilege, not a right.

Sec. 12-432. Definitions.

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

Act means the Georgia Massage Therapy Practice Act, enacted by and defined in O.C.G.A. § 43-24A-1 et seq. as amended.

Board means the Georgia Board of Massage Therapy, enacted by the provisions of O.C.G.A. § 43-24A-4.

For hire means a reasonable expectation that the person to whom the massage is provided, or some third person on his behalf, will pay money, give other consideration, or provide any gratuity therefor.

Licensed massage therapist means a person who holds a valid, current, unrevoked, and unsuspended State license in the practice of massage therapy issued by the Board pursuant to the Act.

Massage therapy means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body in which the primary intent is to enhance or restore health and well-being. The term "massage therapy" includes complementary methods, including, without

limitation, the external application of water, superficial heat, superficial cold, lubricants, salt scrubs, or other topical preparations and the use of commercially available electromechanical devices which do not require the use of transcutaneous electrodes and which mimic or enhance the actions possible by the hands. The term "massage therapy" also includes determining whether massage therapy is appropriate or contraindicated, or whether referral to another health care provider is appropriate. The term "massage therapy" does not include the use of ultrasound, fluidotherapy, laser, and other methods of deep thermal modalities (O.C.G.A. § 43-24A-3).

Massage therapy business means a business with a free standing, store front or building location in the City at which any person engages in or offers massage therapy, regardless of the name of the business or the words used to describe the business through signage or advertisement or in filings with the Secretary of State. Massage therapy businesses are subject to regulation by a local government, pursuant to O.C.G.A. §§ 43-24A-22(a) and 48-13-9(b)(17), as amended.

Massage therapist, masseuse, masseur, massage practitioner, or person practicing massage means a person who performs or engages in the practice of massage.

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

State license means a license to practice massage therapy issued by the Board, pursuant to the Act.

Sec. 12-433. Requirements and application.

(a) *Requirements.*

- (1) *State license.* No person other than a licensed massage therapist shall perform or offer to perform massage in a massage therapy business within the City.
- (2) *Conditions of issuance.* No license shall be issued to any massage therapy business within the City under this division unless every person who performs or offers to perform massage on its premises is a licensed massage therapist, and it shall be unlawful to operate as a massage therapy business unless all such persons are and remain licensed massage therapists. The City license of a massage therapy business that fails to meet this requirement is subject to revocation.
- (3) *City license.* No person shall operate a massage therapy business without a valid, current, unrevoked, and unsuspended license from the City, pursuant to this division.
- (4) *Conviction of a crime.* No license under this division shall be issued or renewed to any person who himself or who has a co-owner, partner or manager who has been convicted or shall have entered a plea of nolo contendere for any felony within ten years, or two misdemeanors within five years, other than traffic violations, immediately prior to the filing of the application. The term "conviction" includes an adjudication of guilty or plea of guilty or nolo contendere or the forfeiture of a bond in part or in whole when charged with a crime. Licenses granted to persons who fail to meet this requirement at any time shall be subject to revocation.
- (5) *Age of licensee.* No person under the age of 18 years shall be issued a license to operate a massage therapy business.

- (6) *Personal residency; agent.* All applicants for licenses under this division and all actual owners of therapy businesses for which licenses are sought shall be bona fide residents of the City or Gwinnett County at the time of the filing of the applications and shall remain bona fide residents of the City or Gwinnett County during all times that the licenses and renewals thereof are in effect, or shall name one or more residents in the City or Gwinnett County as the agent or representative of the licensee, who shall be responsible for any matter relating to such license and who, at all such times, shall be a bona fide resident of the City or Gwinnett County and shall be granted the express authority to accept service of process on behalf of the business. If any such person shall cease to be a resident of the City or Gwinnett County, another person shall immediately be appointed, in writing, in his place, and written notice shall be given the City Administrator, stating the name and address of the new agent.
 - (7) *Corporate residency; agent.* All applications for licenses under this division by a corporation or other business entity shall name in the application one or more residents in the City or Gwinnett County as the agent and representative of the corporation to receive all communications, notices, services of process, or other papers or documents on behalf of the corporation in connection with any matter arising out of or connected with the issuance, holding, suspension, revocation, or other action with respect to any license issued pursuant to this division. The application shall give the mailing address of the person, and the mailing to any such person at such address of any notice required to be given under this chapter or any other law shall be sufficient notice to the corporation. If any such person shall cease to be a resident of the City or Gwinnett County, another person shall immediately be appointed, in writing, in his place, and written notice shall be given the City Administrator, stating the name and address of the new agent.
 - (8) *Occupational tax certificate required.* An occupational tax certificate shall be required for each person, firm, corporation or other entity operating a massage establishment.
- (b) *Application for license.*
- (1) To operate a massage therapy business within the boundaries of the City, the applicant must first make application to the City Administrator on a form provided by the City Administrator or his/her designee and submit a criminal background check of the applicant along with any co-owners, partners and non-massage therapists who will act as a manager at the business. The applicant, after having fully and truthfully completed such form and paying the prescribed fees, and having received a license, shall maintain and operate such business pursuant to the ordinances of the City and the laws of the State.
 - (2) As part of the license process with the City Administrator, each applicant shall provide a true and correct copy or original of the State license for each and every massage practitioner, performing or anticipated to perform massage at its location, for inspection and copying. The applicant shall also supply a set of fingerprints taken by Gwinnett County or other approved location for each licensed massage therapist employed by the applicant and two forms of photo identification. Failure of any massage therapy business to provide State licenses or fingerprints of its employees shall automatically result in the denial of the issuance of a City license to the applicant.

- (3) After the City license has been issued, the licensee shall, in person, furnish to the City Administrator a true and correct copy or original of the State license, fingerprints taken by the Dacula Marshal's Department or other approved location and two forms of photo identification for each new massage practitioner at the licensee's massage therapy business prior to such person's commencing to perform or offering to perform massage at such massage therapy business. When any massage practitioner discontinues performing massage at a massage therapy business, the licensee shall make the departure known in writing to the City Administrator within 30 days of such departure.
- (4) Each applicant for a license shall make his affidavit before the City Administrator, on a form provided by the City Administrator, upon oath, swearing or affirming that all persons practicing massage on the premises of his massage therapy business are licensed massage therapists and that all requirements of this division for a license have been met.
- (5) Each application under this division shall include, but shall not be limited to, the following information:
 - a. A list of services to be provided.
 - b. The location, mailing address and all telephone numbers where the business is to be conducted.
 - c. The name and residence of each applicant and any agent as required by this division.
 - d. Proof that the applicant is at least 18 years of age.
 - e. Copy of two forms of photo identification for each applicant, such as driver's license or official identification card.
 - f. The name and a copy of the State license of each massage therapist that will be employed by the applicant.
 - g. Copy of two forms of photo identification for each massage therapist that will be employed by the applicant.
 - h. A list of any and all criminal convictions of the applicant other than misdemeanor traffic violations, including the dates of conviction, description of the offense and the court where the conviction was received.
 - i. 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 applicants for the permit.
 - j. Any other State-required affidavits or forms, including local benefit receipt affidavits.
 - k. Applicants must be at least 18 years of age, employ one (which may include himself or herself) or more massage therapists licensed in accordance with subsection (a) of this section, and if a corporation, is an officer of the corporation which is organized and authorized to do business pursuant to the laws of the State. The applicant, in order 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 certificate.

- l. A set of fingerprints taken by Gwinnett County or other approved location for each massage therapist employed by the applicant.
- m. A set of fingerprints taken by Gwinnett County or other approved location for each owner, partner, and manager of each massage business.

Sec. 12-434. Distance regulation.

- (a) Following the adoption of the ordinance from which this division is derived, at no time shall the number of free standing or store front massage therapy businesses inside the City limits exceed the number three (3) per 6,000 persons living within the City limits based on the most current United States Census and calculated on a pro-rata basis. Should the City's population exceed 6,000 persons, then the number of licensed free standing or store front massage therapy businesses inside the City limits may increase by one (1) such location for every additional 6,000 of population. Notwithstanding the foregoing, the number of licenses permitted by this section shall never be less than one.

Further, there shall be a 150-foot buffer from any free standing or store front massage therapy business to any other free standing or store front massage therapy business or 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.

- (b) No application for a massage therapy business license shall be granted unless the business is permitted in the zoning district where operation of the business is proposed.
- (c) Upon application for a massage license and/or occupation tax placard, the applicant will provide to the City Administrator a survey showing the distances to each residentially zoned property within a 150-foot radius of the massage business.
- (d) The City Council recognizes that upon the adoption and effective date of the ordinance from which this division is derived, 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 Council to allow the continued operation of the existing massage therapy businesses, provided that the same otherwise comply with all other applicable laws and regulations of the City and State.
- (e) Any licensed massage therapy businesses legally operating prior to the adoption of the ordinance from which this division is derived shall be exempt from the distance and population cap regulations of this division until the licensee of such massage therapy business or a new licensee to whom the license is legally transferred as provided for by section 12-442 no longer holds a valid massage therapy license from the City of Dacula.

Sec. 12-435. License renewal.

Licenses for massage therapy businesses may be renewed on a calendar year basis, provided that the licensees continue to meet the requirements set out in this division and the requirements of the Act.

Sec. 12-436. Registry.

A registry shall be kept of all persons practicing massage on the premises of such massage therapy business, which shall be available for inspection by an authorized agent of the City, including, but not limited to, the City Administrator, the authorized designee of the City Administrator and City Marshals. The registry required by this section shall be made available for inspection during normal hours of business and must provide the following information:

- (1) Legal name and any other names the massage practitioner has been or is known as or by;
- (2) Current address, including street and city;
- (3) State or country of birth;
- (4) Date of birth;
- (5) Number and expiration date of State license;
- (6) Position with the massage therapy business or business entity; and
- (7) Two copies of photo identification for the massage therapist.

Sec. 12-437. Posting licenses and rates.

- (a) Each massage therapy business shall post a legible copy of its license obtained pursuant to this division, along with copies of the State license of each massage therapist operating on the premises of such therapy business, in a conspicuous place in the licensee's place of business and shall keep such licenses there at all times.
- (b) Price rates for all massage therapy services shall be prominently posted in the reception area or other conspicuous location available for all prospective customers. No service shall be allowed or permitted that is not prominently posted with its fees in such location.

Sec. 12-438. Record of patrons receiving services.

Each massage therapy business shall maintain a list of patrons who received massage therapy services at the business. The list shall include the patron's name, address, telephone number and time and date of service. Entries required under this section shall be maintained for one year.

Sec. 12-439. Escort bureau or introduction services and adult entertainment prohibited

No massage therapy business shall act as an escort bureau, escort agency, introduction services or dating service or conduct any adult business those terms are defined in section 12-267.

Sec. 12-440. Alcoholic beverages prohibited.

No alcoholic beverages shall be sold, served, given, dispensed, provided, consumed, or caused or allowed to be sold, served, given, dispensed, provided, consumed by or to any person on the premises of a massage therapy business or kept thereon. The term "alcoholic beverages" means and includes all types and kinds of alcohol, as defined in chapter 4.

Sec. 12-441. Hours of operation; inspection; right of entry.

- (a) Massage therapy businesses shall be open for business only between the hours of 6:00 a.m. and 10:00 p.m., inclusive.
- (b) Any business holding a license issued under this division shall, at any time that the premises are open for business, be open to inspection by an officer of the Police Department or a duly authorized agent of the City Administrator. It shall be unlawful for any person holding a massage facility business license or an employee of such licensee to refuse such inspection officer immediate access to the premises or to hinder such officer in any manner; such refusal or hindrance on the part of any license holder or employee shall be grounds for the immediate revocation or suspension of a massage facility license.
- (c) As a condition of maintaining a massage business license issued under this division, at any time that the premises are open for business the massage therapy business will require massage therapists in their employment to submit to reasonable verification efforts by authorized City Officials to confirm the identity of the massage therapist and to confirm State certification. Verification methods may include, but are not limited to, a review of photo identification and/or fingerprinting of the massage therapist.
 - (1) The refusal of any massage therapist to submit to reasonable verification efforts as provided in this section shall be cause for suspension or revocation of the massage therapy business license but shall not result in any citation or adverse consequence for the massage therapist.
 - (2) The scope of any investigation performed under this subsection should be limited to verification of the identity and State certification of a massage therapist and should only take place in common areas open to the public during normal business hours.

Sec. 12-442. Name; place of business; sale, transfer, or change of location.

No person or business entity granted a location license pursuant to this division shall operate the business under a name not specified in the license nor conduct business at any location or place not specified in the license. No license shall be transferable. Upon the sale or relocation of a massage therapy business, the license thereof shall be null and void.

Sec. 12-443. Restrictions on presence of minors.

It shall be unlawful for any person operating a massage therapy business to permit persons under 18 years of age to enter any area or room where massage therapy is performed unless such minor is accompanied by a parent, legal guardian or other adult with lawful custody or control of the minor or has a written prescription from a physician, surgeon, osteopath, or podiatrist who has a valid current license, issued pursuant to State law.

Sec. 12-444. Operating requirements.

- (a) *Clean and sanitary condition.* Every portion of the premises of, and all equipment and supplies of, the massage therapy business shall be kept clean and shall be operated in a sanitary condition.

- (b) *Attire of employees.* It shall be the responsibility of the massage therapy business, licensed under this division to ensure that any employees involved in any way with massage therapy services or who will be present during massage therapy services are dressed in clean, opaque attire that does not expose to view any sexual or genital areas and covers all areas from the top of the breast line to an area no higher than four inches above the knee line.
- (c) *Laundry.* All sheets and towels provided to patrons in massage facilities shall be clean and laundered after each use and stored in a sanitary manner.
- (d) *Locked doors.* It shall be prohibited for any massage facility business to lock main entrance doors to the business or any doors to rooms where massage therapy is being performed while the business is open.
- (e) *Unlawful to massage sexual areas.* It is unlawful for any person in a massage establishment to place his hands upon, to touch with any part of his body, to fondle in any manner, or to massage a sexual or genital area, as defined by this division, of any person or to act in a manner intended to arouse, appeal to or gratify the lust or passions of sexual desires.
- (f) *Conduct on premises.* All persons holding a massage facility business license shall at all times be responsible for the conduct of business on the licensed premises, and for any act or conduct of any massage therapist utilizing the facility which constitutes a violation of the provisions in this division. Any violation of City, State or federal laws committed on the licensed premises by any such holder of a massage facility business license or employee of the facility that affects the eligibility or suitability of such person to hold a license, may be grounds for suspension or revocation of the City license.

Sec. 12-445. Restriction upon transfers.

- (a) Licenses issued under this division shall not be transferable except as otherwise provided for in this section.
- (b) In case of the death of any person owning a license, or any interest greater than ten percent therein, the license may, with the approval of the City Administrator and subject to the terms of this division, be transferred to the administrator, executor or personal representative of the deceased person, or the lawful heirs of the deceased person, if such heirs make application and meet all of the other qualifications contained in this section. The license of such deceased person shall be held by the administrator, executor or personal representative of such deceased person only for the time necessary to complete execution of his estate and dispose of the license or his interest therein, but in no event to exceed eight months. In the event of the bankruptcy or in the event that any applicant shall have a receiver appointed by any court of competent jurisdiction, such license shall be transferable to such receiver or trustee in bankruptcy for such period of time as may be granted by the City Administrator for the proper liquidation of such assets and stock and goods.
- (c) Nothing in this section, however, shall prohibit one or more of the partners in a partnership holding a license to withdraw from the partnership and to assign his interest in such partnership to one or more of the partners who were partners at the time of the issuance of the license. Such a withdrawal shall not, however, serve to bring any new ownership into the partnership, unless all provisions of this division are fully complied with, and then only upon the approval of the City Administrator. This section shall not prohibit transfer of stock to

persons who held more than ten percent of any class of stock in the corporate owner at the time of issuance of the license.

- (d) A licensee may take in partners or additional stockholders where it is determined that additional capital furnished is to be used exclusively for additional inventory or expanding the facilities of the business or for building new facilities and where it appears that the licensee himself will directly receive none of the additional capital investment. Under this section, an additional partner or new stockholder must be approved by the City Administrator. This subsection only applies to corporations when the new stockholder obtains ten percent or more of the common stock or financial interest in the business entity.
- (e) Should a transfer of the license be approved, there shall be no prorated return of any license fee and the new licensee shall meet all requirements for a new license to be issued under this division, except payment of license fees.
- (f) Except as provided in this section, any change in the ownership of any entity owning a licensed establishment shall be cause for immediate suspension of any license issued under this division pending a revocation hearing as provided for under this chapter.

Sec. 12-446. Revocation, suspensions, violations and penalties.

- (a) *Revocation and suspension.* Upon notice, the City Administrator may, for good cause, revoke or suspend or place on probation the license of any massage therapy business:
 - (1) That commits or allows any violations of the provisions of this division;
 - (2) That allows any massage therapist, working on the massage therapy business's premises, to commit or offer to commit a sexual crime under O.C.G.A. Title 16, Chapter 6;
 - (3) That allows any person to perform or offer massage on the premises who is not a licensed massage therapist;
 - (4) Where the applicant for the massage therapy business's City license gave false information on the application, in his affidavit, or in the massage therapy business's registry as required in this division, or fails to update information related to the license to the City Administrator as required by this division; or
 - (5) Where the licensee fails at any time to meet the requirements for licensure under this section.
- (b) ***Violation; penalty.*** In addition to revocation or suspension of the massage therapy license, any person who violates any provision of this division may, upon conviction, be punished in accordance with section 1-8. Each day during which said offenses occur shall constitute a separate offense, as shall each separate act constitute a violation.
- (c) *Reinstatement fee.* If a license is suspended or revoked and the license holder corrects or cures the issues prompting such suspension or revocation, the license may be reinstated upon the holder's satisfaction of conditions imposed by the City Administrator and the payment of a restoration fee of \$500.00.

Sec. 12-447. Notice of intent to deny, revoke or suspend license.

- (a) Whenever, in the opinion of the City Administrator, there is cause to deny an initial application or renewal, or to revoke or suspend the license of a massage therapy business, a written notice of intention to revoke or suspend shall be furnished to the holder thereof. Such written notice shall list the grounds upon which revocation or suspension is sought and shall set forth the licensee's appeal rights.
- (b) For the purpose of this section, notice shall be deemed delivered when personally served or when served by registered or certified mail, return receipt requested, within three days after the date of deposit in the U.S. mail.

Sec. 12-448. Appeal hearings.

- (a) No license shall be denied, suspended or revoked without the opportunity for a hearing as provided in this section.
- (b) The City Administrator or his designee shall provide written notice of the decision to deny, revoke or suspend a massage therapy business license. Any applicant or licensee adversely affected by the decision of the City Administrator may have a review thereof by appeal to the Mayor and Council or their designated hearing officer.
- (c) Appeals shall be made by written petition filed in the Office of the City Administrator within 15 days of the final decision or action of the City Administrator.
- (d) In order to defray administrative costs, all appeals under this section must be accompanied by a filing fee of \$500.00.
- (e) A hearing shall be conducted before the Mayor and City Council or their designated hearing officer on each properly filed appeal within 30 days of the filing of the appeal with the Office of the City Administrator, unless a continuance is agreed upon by the appellant and the City Administrator.
- (f) The appellant at such a 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. All testimony shall be sworn.
- (g) The City Administrator shall bear the burden of proof by a preponderance of the evidence standard. The determination and findings by the City Administrator shall not be set aside unless the Mayor and Council or their designated hearing officer finds them to be:
 - (1) Contrary to law or ordinance;
 - (2) Unsupported by substantial evidence on the record as a whole; or
 - (3) Unreasonable.
- (h) The written findings of the Mayor and City Council or their designated hearing officer shall be forwarded to the City Administrator after conclusion of the hearing, and it shall be the duty of the City Administrator to notify the appellant of the decision.
- (i) The findings and decision of the Mayor and City Council or their designated hearing officer shall be final unless appealed within 30 days of the date of said findings by certiorari to the Superior Court of the County.

Sec. 12-449. Exemptions.

- (a) The requirements of this division shall have no application to or effect upon the following persons acting within the scope of their professions:
 - (1) Medical doctors and osteopaths, chiropractors, physical and occupational therapists, podiatrists, acupuncturists, registered or licensed practical nurses.
 - (2) Cosmetologists duly licensed to practice in this State pursuant to State law, except that this exemption shall apply solely to massaging the head, neck, face, scalp, hair, hands or feet of the patron.
 - (3) Employees of duly licensed nursing and convalescent homes and hospitals;
 - (4) Athletic directors or trainers who are affiliated with an accredited educational institution or a bona fide sports team and whose work is limited to athletic team members.
 - (5) Massage therapists licensed by the state who travel to clients or otherwise perform services without a free standing building or store front location.
- (b) Massage therapists licensed by the State may perform massage therapy services in the home of a client, provided that the massage therapy business the therapist is associated with is properly licensed under this division and complies with section 12-433 (application) and section 12-435 (renewal). Massage therapy businesses providing client home services shall not be subject to the provisions of this division regulating the physical locations where massage therapy shall be performed but shall comply section 12-444 (prohibiting massage of sexual or genital area, or to act in a manner intended to arouse, appeal to or gratify the lust or passions or sexual desires); section 12-441 (regulating hours of operation) and section 12-439 (prohibiting escort services and adult entertainment).
- (c) Requirements for licensure under the Act shall not apply to persons excluded from State licensure pursuant to O.C.G.A. § 43-24A-19, acting within the scope of their professions.

Secs. 12-450-451. Reserved.

SECTION 2.

In the event any Court of competent jurisdiction determines that any portion of the foregoing amendment is invalid, unconstitutional or otherwise illegal, such rulings shall not impair the validity of the rest and remainder of this amendment.

SECTION 3.

All laws and parts of laws in conflict with this Ordinance are hereby repealed.

SECTION 4.

This Ordinance shall take effect immediately upon its adoption by the Mayor and City Council.

SO ORDAINED by the governing authority of the City of Dacula, this _____ day of February, 2022.

AYES: ____

NAYES: ____

HUGH D. KING, III
MAYOR, CITY OF DACULA

ATTEST:

HEATHER COGGINS, ACTING CITY ADMINISTRATOR