

## MESSAGE ESTABLISHMENTS

Revised 11-10-2003

### INDEX

- 1.1. Definitions.
- 1.2. Regulatory fee Certificate requirements.
- 1.3. Application requirements; investigation; contents.
- 1.4. Inspection authorized
- 1.5. Operating requirements; unlawful acts
- 1.6. Hours of operation
- 1.7. Exemptions.
- 1.8. Posting of regulatory fee certificate; transfer of regulatory fee certificate.
- 1.9. Revocation or suspension of regulatory fee certificate.
- 1.10. Responsibility of owner or operator.
- 1.11. Record of treatment to be kept.
- 1.12. Compliance.

#### **1.1 Definitions.**

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section.

*Applicant:* 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:* Any person over eighteen (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:* 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 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:* 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:* Any person who, for any consideration whatsoever, engages in the practice of massage as defined in this section.

*Outcall massage service:* Providing any of the services which constitute massage as defined above from or at any place or location other than a fixed place of business licensed as such under this chapter as a massage establishment.

*Patron:* Any person over eighteen (18) years 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:* A person licensed by the State of Georgia to practice physical therapy as defined by the O.C.G.A. § 43-33-3.

*Accredited school of massage:* An educational program or course of study of not less than five hundred (500) hours induration which is accredited by the Commission on Massage Training Accreditation/Approval (COMTAA) or recognized by a state licensing agency such as the Nonpublic Post Secondary Education Commission of the State of Georgia. The curriculum of such program or course of study shall include, but not be limited to, massage theory and technique, anatomy and physiology.

*Sexual or genital area:* Genitals, pubic area, anus, or perineum of any person, or the vulva or breast of a female.

### **1.2 Regulatory fee certificate requirements.**

(a) The applicant and each therapist must be qualified through graduation from a state certified school and accredited school of massage, provided such accredited school of massage must include a course of study of not less than six (6) months; provided, further, the applicant must show that he/she has received training and experience in physical culture, massage, hydrotherapy, electrotherapy and hygiene. Massages, massage therapy or acupressure treatments may be given by persons not holding a license as masseur, masseuse, massage therapist, or acupressurist, provided the massages, massage therapy or acupressure treatments are given under the direct supervision of a person having a license as a masseur, masseuse, massage therapist or acupressurist, and further provided that a person holding a license as a masseur, masseuse, massage therapist or acupressurist shall be in the same room where the massage, massage therapy or acupressure treatment is being administered during the entire time of the giving of the treatment.

(b) The applicant and each therapist must furnish a certified statement from the National Certification Board of Therapeutic Massage and Body Work evidencing passage by the applicant thereof of the exam for massage therapists administered by said Board.

(c) A business license is required for any person, firm, corporation or other entity operating a massage establishment. Such applicant must be at least eighteen (18) years of age, employ one or more massage therapists meeting the requirements set forth in (a) above, and if a corporation, is an officer of the corporation which is organized and authorized to do business pursuant to the laws of this 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 certificate.

(d) 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 (1) year prior to application.

### **1.3 Application requirements; investigation; contents.**

In addition to the requirements contained in section 1.5, every applicant for a regulatory fee certificate to practice massage, or to maintain, operate or conduct a massage establishment shall file

an application under oath with the city upon a form provided by the code enforcement officer and pay a non-refundable fee of one hundred dollars (\$100.00). Copies of the application shall within five (5) days be referred to the chief building official and code enforcement officer. These departments shall, within thirty (30) days, inspect the premises proposed to be operated as a massage establishment and shall make written verification to the code enforcement officer concerning compliance with the codes of the city which they administer. The code enforcement officer shall also make an investigation of the applicant's character and qualifications. Each application shall contain the following information:

- (a) A definition of service 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;
  - (1) If the applicant is a corporation, the names and residence address of each of the officers and directors of the corporation and of each stockholder owning more than (10) per cent of the stock of the corporation, and the address of the corporation itself, if different from the address of the establishment;
  - (2) 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;
- (d) The two (2) previous addresses immediately prior to the present address of the applicant, including stockholders and partners if applicable;
- (e) Proof that the applicant is at least eighteen (18) years of age, including stockholders and partners if applicable;
- (f) Individual or partnership applicant's height, weight, color of eyes and hair, and sex;
- (g) Copy of identification such as driver's license and social security card, including stockholders and partners if applicable;
- (h) Any applicant for a business license under this article is required to submit to a police clearance 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 (10) per cent 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 one hundred dollar (\$100.00) fee is to be submitted to the police department for a background check and photograph;
- (i) Business, occupation or employment of the applicant for the three (3) years immediately preceding the date of application, including stockholders and partners if applicable;
- (j) 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;

(k) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the crimes and place convicted;

(l) The name and address of each massage therapist who is or will be employed in the establishment;

(m) The applicant must furnish a diploma or certificate of graduation from a recognized school as defined in this article; however, if the applicant will not engage in the practice of massage as defined herein, such applicant need not provide diploma or certificate of graduation;

(n) 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 paragraph (3) wherein the business or profession of massage is carried on;

(o) A description of any other business to be operated on the same premises or adjoining premises owned or controlled by the applicant;

(p) 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;

(q) Such other identification and information necessary to discover the truth of the matters required to be set forth in the application;

(r) The holder of a regulatory fee 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 (10) days after such change occurs including the name of any new therapist who must supply verification of certification and qualification consistent with this Article.

#### **1.4 Inspection authorized.**

A code enforcement officer of his/her authorized representative(s) 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.

#### **1.5 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 of Georgia, Gwinnett/Hall County, and the City of Buford.

(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 therapist and other persons on the premises, with the exception of the customers, shall be completely clothed at all times when administering a massage. For the purposes of this requirement, "completely clothed" shall mean 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 shall mean having on the lower body appropriate undergarments plus either pants or skirt which must cover from the waist down to a point at least 2 inches above the knee. Clothes must be completely non-transparent.

(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 this article, 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 the age of 18 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.

(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, as provided by charter. 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 of this Code of Ordinances.

#### **1.6 Hours of operation.**

No massage therapist shall engage in such business or profession except between the hours of 8:30 a.m. and 9:30 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 under this code as an offense and persons found guilty of such violations shall be punishable within the general limits of punishments as provided by the Code of Ordinances of the City of Buford.

#### **1.7 Exemptions.**

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

(a) Physicians, surgeons, chiropractors, osteopaths, and physical therapists who are duly licensed to practice their respective profession in the state.

(b) Nurses who are registered under the laws of the state.

(c) Barbers and beauticians who are duly licensed under laws of this 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.

(d) Physical therapists licensed under the laws of the State of Georgia.

#### **1.8 Posting of regulatory fee certificate; transfer of regulatory fee certificate, expiration and renewal.**

(a) Every person obtaining a regulatory fee certificate under this chapter 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 designee for renewal for the ensuing year on the form provided on or by December 31st. Any establishment that has previously failed to complete the subject application set forth in § 1.3 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.

### **1.9 Revocation or suspension of regulatory fee certificate.**

A regulatory fee 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 of Buford as further set forth in the City of Buford Zoning Ordinance.

(a) 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):

- (1) Failure of the applicant to maintain initial qualification for obtaining the license;
- (2) 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;
- (3) 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;
- (4) The premises are in violation of the building codes;
- (5) 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;
- (6) 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;
- (7) 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;
- (8) The applicant or therapist is guilty of fraudulent, false, misleading, or deceptive advertising or practices;
- (9) The original application, or renewal thereof, contains materially false information; or the applicant has deliberately sought to falsify information contained therein;
- (10) 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;
- (11) 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;

(12) The applicant or his employees have allowed to occur or have engaged in a violation of any part of this article;

(b) Any massage therapist or massage establishment operator who has his or her or its regulatory fee certificate revoked shall be disqualified from reapplying for such a certificate for twelve (12) months immediately following revocation.

(c) Revocation of a regulatory fee certificate shall automatically revoke the entity's business/occupation tax license.

#### **1.10 Responsibility of owner or operator.**

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

#### **1.11 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 of Buford Code Enforcement Office. Records shall be kept for a minimum of three years.

(b) No massage therapy shall be preformed by any massage practitioner in the home of any client or in any place except for the pace of business of a licensee hereunder, unless a written memorandum is first made in a log or record dept 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.

#### **1.12 Compliance.**

It is unlawful and a misdemeanor 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 chapter, or without complying with all regulations contained in this chapter.