

***ARTICLE XIV. HEALTH SPAS<sup>1</sup>***

***DIVISION 1. IN GENERAL***

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<sup>1</sup>Ord. No. 2023-013, § 1, adopted Sep., 18, 2023, set out provisions intended for use as art. XIII. Inasmuch as there were already provisions so designated, said section has been codified herein as art. XIV at the discretion of the editor.

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## **Sec. 12-370 Definitions**

Health spa means a business establishment that derives its primary source of income from massage therapy as defined in state law, or any other hands-on therapy including foot massage and the practice of reiki, to help customers, reduce stress, provide therapy, enhance appearance, enhance or restore health and well-being, or experience sensory pleasure.

Licensee means any person holding a license issued under this division who is full time employee responsible for the management of the establishment. A licensee must be a resident of the state of Georgia and must work on-site a minimum of one day per week.

Manager means a full-time employee who is responsible for the management and operation of the establishment. A manager or manager's designee must be on the premises at all times the business is in operation.

Massage Therapist – means a person licensed by the State of Georgia as a licensed massage therapist.

Massage Therapy or Massage – means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body by a state licensed massage therapist in which the primary intent is to enhance or restore health and well-being. Such term includes complementary methods including without limitation, lubricants, salt scrubs, or other topical preparations.

## **Sec. 12-371. Enforcement of division; penalty.**

- (a) *Penalty.* Any person violating any of the provisions of this division governing health spas shall be punished as provided in section 1-8.
- (b) *Revocation or suspension of license.* Any person violating any of the provisions of this division governing health spas subjects any license under this division to revocation or suspension as provided in this division.
- (c) *Abatement of violations as nuisance.* Every violation of the terms of this division governing health spas shall be termed a nuisance and a continuing nuisance so long as such violation may be continued, and such violation may be subject to abatement as a nuisance as provided by laws of this state.
- (d) *Injunction.* The violation of any provisions of this division as they pertain to health spas may be enjoined by proceedings in courts of competent jurisdiction in this state. Such actions may be maintained notwithstanding that other adequate remedies at law exist.

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- (e) *Remedies cumulative.* Each of the remedies set out in subsections (a) through (d) of this section is cumulative and is not to be construed as curtailing the right of any resident, property owner or other person from bringing any proper action for enforcement of this division as it pertains to health spas.
- (f) *Continuance of nonconforming businesses.* A nonconforming business is a business that was legally operating in the specified location prior to the enactment of amendments to this division on September 18, 2023. Such businesses shall be allowed to legally continue even though such use does not conform with the provisions of this division, subject to the following:
- (1) The nonconforming use may continue only in the original building structure or land area that was originally occupied by the nonconforming use.
  - (2) A nonconforming use cannot be reinstated after it has been abandoned. It shall be prima facie evidence of abandonment for the owner and/or operator of the nonconforming use to discontinue the nonconforming use for 12 months, to fail to obtain a new or renew an existing business license as required under the Code of Powder Springs, Georgia, for the operation of such nonconforming use, to fail to declare and remit the sales tax required by state law for the nonconforming use.
  - (3) Failure to follow any other state, federal or local administrative procedure or regulation that is required for the nonconforming use shall be prima facie evidence of abandonment.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-372. Inspections.**

The city, through its employees of the city community development department, or the city police department, shall have the right to inspect the place of business and records , not protected by HIPAA, of any licensee under this division during the hours authorized under this division for conduct of business to ensure compliance with this division.

### **Sec. 12-373. List of employees to be filed with city.**

It shall be the duty of all owners, licensees, or managers under this division to file with the city, through its community development department and/or police department, the names of all employees required to have a work permit and designated managers, their home addresses, home telephone numbers, places of employment, date of birth, their duties and services performed, a copy of their state massage therapy license (when applicable), and any other descriptive information that the community development department or police department may require in its investigation of the establishment and its employees, within 72 hours of employment upon hire and prior to the employee's 1<sup>st</sup> day of employment at the licensed health spa . All changes in information shall be filed in writing, via email or via online portal within 72 hours of the change to the employee's 1<sup>st</sup> day of employment at the licensed health spa.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-374. Record of treatments.**

It shall be the duty of any person operating a business granted a license under this division to maintain, in English correct and accurate records at the place of business of the names, telephone numbers, and addresses of the persons receiving treatment at such establishment, the type of treatment administered, cost of treatment and the name of the person of the establishment administering such treatment. The Record of Treatment must be completed prior to providing service. ~~Records shall also be maintained as required under section 12-375.~~ Such

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records shall be subject to inspection at any time by any member of the community development department.  
Entries required under this section shall be maintained for three (3) years.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-375. Hours and place of operation.**

The owner, licensee, or manager of the health spa shall provide in writing to the City of Powder Springs Community Development Department the hours of operation of the health spa. No ~~licensee~~ business operating under this division shall operate a health spa except during the hours of 6:00 a.m. and 10:00 p.m. The licensee or a designated manager shall be on the premises at all hours that the establishment is engaged in or open for business. No employee shall remain in the establishment between the hours of midnight and 5:00 a.m.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-376. Prohibited contact.**

No person in a Health Spa shall conduct the practice of massage therapy without a valid Massage Therapy License from the State of Georgia.

No independent contractor or any employees, apprentices or trainees of the health spa business, shall manipulate, fondle or handle the sexual organs or anus of any person.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

State law reference(s)—Erotic stimulation of genitals, O.C.G.A. § 16-6-16.

### **Secs. 12-377—12-390. Reserved.**

## *Division 2. LICENSE*

### **Sec. 12-390~~1~~. Application.**

No person shall engage in the business, trade, or profession or practice the business, trade or profession of a health spa unless such person shall, before engaging in such business, trade or profession, file an application for a license with the city as set forth in division 3 of this article. Such application shall set forth or show compliance with the following:

- (1) ~~Name and address of the applicant.~~ Name to include preferred name, chosen name, and aliases. Current business, residential, and mailing addresses for the applicant.
- (2) Name to include preferred name, chosen name, and aliases, and address of any person having previously employed the applicant for a period of two years or longer in a health spa or business.
- (3) Qualifications, plainly stated, with all documentary exhibits annexed.
- (4) A diagram of the establishment's floorplan must be submitted with the application. Floorplan should include the location of all rooms and equipment located within.

### **Sec. 12-391. Time limit to begin business in licensed establishment; forfeiture for nonuse.**

- (1) All holders of licenses under this division must, within 12 months after the issuance of the license, open

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for business the establishment referred to in the license. Failure to open the licensed establishment as referred to in this division within the 12-month period shall serve as an automatic forfeiture and cancellation of the unused license, and no refund of license fees shall be made to the license holder. No massage therapy may be conducted until such time as the business is open to the public.

(2) Any holder of a license under this division who shall begin the operation of the business as authorized in the license, but who shall for a period of three consecutive months thereafter cease to operate the business as authorized in the license, shall upon completion of the three-month period automatically forfeit his license, which license shall then, by virtue of such failure to operate, be canceled without the necessity of any further action of the county.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-392. Qualifications and investigation of applicant(s), licensee, and employees.**

- (a) The applicant and licensee must be a U.S. citizen or a legal permanent resident ~~alien~~ prior to making application.
- (b) The licensee is required to be a resident of the State of Georgia and a state licensed massage therapist.
- (c) Where the applicant for a license under this chapter is a corporation, any license for the operation of a health spa shall be applied for by and shall be issued to the corporation and either the majority shareholder thereof, or a person deemed the licensee by the corporation.
- (d) Where the applicant for a license under this chapter is a partnership, any license for the operation of a health spa shall be applied for by and shall be issued to the partnership and either the managing general partner thereof, or a person deemed the licensee by the partnership.
- (e) Where the applicant for a license under this chapter is a sole proprietor, license for the operation of a health spa shall be applied for by and shall be issued to the sole proprietor if he is working full-time in a managing capacity on the premises, and if not, then the sole proprietor and a person deemed the licensee by the sole proprietor.
- (f) The city police department shall investigate the background of both the applicant(s) and the licensee, and their spouses, and employees and independent contractors, except for Georgia state licensed massage therapists, of the establishment and report its recommendation to the business license division manager for a health spa license.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-393. Location and premises requirements.**

(a) At no time will any person reside or lodge either temporarily or permanently in the health spa establishment.

Evidence that premises are used for residential or lodging purposes may include, but is not limited to:

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1. Beds or mattresses, other than professional massage tables;
  2. Bedding, such as pillows, blankets, and sheets, other than those used for professional massage tables;
  3. Sleepwear, including pajamas, nightgowns, and lingerie;
  4. Groceries, that require cooking, such as raw meats, poultry, fish, and grains;
  5. Cookware, utensils, and cooking equipment;
  6. Clothing in an amount that exceeds one change of clothing for each employee or independent contractor who is present on the premises; or
  7. Personal grooming and hygiene items.

~~(a)~~ b) An applicant for a health spa license under this subdivision, prior to making application for a license, must have a location in the City of Powder Springs where the health spa is a permitted use in the underlying zoning district.

~~(b)~~ c) The establishment shall be subject to inspection at any time during business hours by the community development director or his or her designee and/or by the police department or any other regulatory unit of the county to ensure compliance with this article.

~~(e)~~ d) 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 at all times when administering a massage.~~ 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.

~~(d)~~ e) Ordinary beds or mattresses shall not be permitted in any health spa establishment.

~~(e)~~ f) ~~No licensee under this division shall operate a health spa except during the hours of 6:00 a.m. and 10:00 p.m.~~

~~(f)~~ g) ~~The licensee or a designated manager shall be on the premises at all hours that the establishment is engaged in or open for business.~~

~~(g)~~ h) A sign or lettering shall be posted at the main entrance identifying the business as a health spa. Said sign shall have lettering a minimum of five inches in height and shall identify the premises as a health spa business. The sign and the front of the business shall not be illuminated by strobe or flashing lights.

~~(h)~~ i) The hours of operation must be posted on the front door or window, clearly visible from the outside. Any massage or services begun before 10:00 p.m. must conclude at or before 10:00 p.m. Patrons of the health spa may not be permitted to remain on the premises outside these hours of operation.

~~(i)~~ j) A list of services available and the cost of such services font size 12 or larger letters shall be posted in a conspicuous public place within the premises. Only those services listed may be performed. Nothing in this subsection shall preclude the operator from posting additional signs in other languages as long as at least one sign in English is posted pursuant to this subsection.

~~(j)~~ k) No person shall enter, be in or remain in any part of the health spa while in possession of, consuming, using, or under the influence of any alcoholic beverage or controlled substance. The operators(s) and on-duty manager shall be responsible to ensure that no such person shall enter or remain upon the premises.

~~(k)~~ l) All front, reception, hallway or front exterior doors (except back or exterior doors used solely for employee entrance to and exit from the massage business) shall be unlocked during business hours. No massage may

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be given within any cubicle, room, booth or any area within a massage business which is fitted with a lock of any kind (such as a locking door knob, padlock, dead bolt, sliding bar or similar device), unless the only door is an exterior door. Entry doors to any room shall not be obstructed by any means.

(m) Model notice regarding human trafficking notice must be displayed in all public bathrooms, and near public entrances or a location where the signage is visible, as required by State law.

(ml) Foot massages must be performed in chairs in an open space. No foot massage should be conducted in a room behind a closed door or out-of-view. Patrons must be appropriately clothed when receiving foot massage services.

(n) Camera systems monitoring the establishment must have onsite access which allows the viewing of camera footage from within the establishment. There must be cameras at all points of entry and exit.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-394. Grounds for denial, suspension or revocation.**

In addition to the causes for denial, suspension or revocation of a license specified in section 12-5, due cause for denial, suspension or revocation of a license for a massage practitioner or health spa shall include the following:

- (1) The applicant or licensee is or has been guilty of fraud.
- (2) The applicant or licensee is or has been engaged in business under a false or assumed name, or is impersonating another person of a like or different name.
- (3) The applicant or licensee 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 professional duties.
- (4) No license for a health spa shall be issued to any person where any individual having an interest either as owner, partner, principal shareholder, or licensee, directly or indirectly, beneficial or absolute, shall have been convicted within ten years immediately prior to the consideration of a health spa license of criminal attempt or conspiracy to violate any laws relating to racketeer-influenced and corrupt organizations as defined in the Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act (O.C.G.A. § 16-14-1 et seq.), crimes against the person as defined in O.C.G.A. Tit. 16, Ch. 5 (O.C.G.A. § 16-5-1 et seq.), sexual offenses as defined in O.C.G.A. Tit. 16, Ch. 6 (O.C.G.A. § 16-6-1 et seq.), gambling offenses as defined in O.C.G.A. Tit. 16, Ch. 12, Art. 2 (O.C.G.A. § 16-12-20 et seq.), obscenity and related offenses as defined in O.C.G.A. Tit. 16, Ch. 12, Art. 3 (O.C.G.A. § 16-12-80 et seq.), or contributing to the delinquency of a minor, all as defined by state law as it presently exists or may be hereafter amended, or has been convicted of any felony under the laws of this state or any other state or of the federal government.
- (5) Failure of the applicant or licensee to have or maintain initial qualifications for obtaining the license.
- (6) The applicant, licensee, shareholder, partner, agent, employee or independent contractor has employed any person who is not a licensed massage practitioner and allowing or permitting such person to administer massage in an establishment except as may be allowed by state law.

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- (7) The premises in which the business 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.
  - (8) Failure of the applicant or licensee to actively supervise and 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.
  - (9) The violation of any laws or ordinances regulating such businesses or for the violation of any state or federal law.
  - (10) Any change in the area where such business is located, which does not conform with the zoning existing at the new location.
  - (11) Any reason which would authorize the board of commissioners to refuse the issuance of a license.
  - (12) Any violation of this chapter.

(12) The licensee or work permit holder has recklessly allowed three or more violations of this article within a 12-month period.

(13) Any violation of this chapter. That the applicant has violated any law, regulation or ordinance relating to such business within a five-year period immediately preceding the date of application.

(14) That the applicant has had any license issued under the police powers of any county, state, municipality or other governmental entity previously suspended or revoked.

(15) The applicant has demonstrated lack of knowledge of the county ordinances and federal and state law regulating the business. Prima facie evidence of lack of knowledge, as described in this subsection, would include but is not limited to violations of such law or regulation, regulating the business.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-395. Reapplication after denial or revocation.**

Any applicant or licensee under this division who has his license application denied or his license revoked shall be disqualified from reapplying for such a license for 12 months immediately following the revocation or denial.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-396. Change of location of business.**

No licensee under this division shall change the location of the business without applying for and receiving a new license for such location from the business license office.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)



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### **Sec. 12-397. Transfer.**

No license issued under this division shall be transferable.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-398. Employment of persons with prior convictions.**

- (a) No licensee shall employ, for compensation or otherwise, in any health spa, any employee requiring a work permit as defined in section 12-398 who meet any of the following:
- (1) Any person who is not a citizen of the United States; is not an alien admitted for permanent residence, or does not otherwise possess employment authorization from the United States Citizenship and Immigration Services;
  - (2) Any person who has been convicted within five years immediately prior to the application for employment of the following:
    - a. Criminal attempt or conspiracy to violate any laws relating to racketeer-influenced and corrupt organizations as defined in the Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act (O.C.G.A. § 16-14-1 et seq.), crimes against the person as defined in O.C.G.A. Tit. 16, Ch. 5 (O.C.G.A. § 16-5-1 et seq.), sexual offenses as defined in O.C.G.A. Tit. 16, Ch. 6 (O.C.G.A. § 16-6-1 et seq.), gambling offenses as defined in O.C.G.A. Tit. 16, Ch. 12, Art. 2 (O.C.G.A. § 16-12-20 et seq.), obscenity and related offenses as defined in O.C.G.A. Tit. 16, Ch. 12, Art. 3 (O.C.G.A. § 16-12-80 et seq.), or contributing to the delinquency of a minor, all as defined by state law as it presently exists or may be hereafter amended;
    - b. Any felony; or
    - c. Performs any immoral or indecent act to or in the presence of a person with the intent to arouse or satisfy the sexual desires of either the employee or another person on the premises.
  - (3) Any person on parole, probation, or convicted and released from incarceration, for any sexually related crimes, including but not limited to child molestation, aggravated child molestation, or child sexual abuse, as defined in O.C.G.A. § 16-6-4 or individuals required to register as a sex offender pursuant to O.C.G.A. § 42-1-12.
- (b) The omission or falsification of any material information in an application for a health spa work permit shall be a violation of this chapter and grounds for the denial, suspension or revocation of any such work permit; however, any employees excluded from employment under the terms of the section shall have the right to appeal such exclusion to the license review board.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

### **Sec. 12-399. Work permits.**

- (a) *For whom required.* It is the responsibility of the licensee and designee to ensure that the employees required under this Code section obtain and possess the required work permit issued by City of Powder Springs Police Department prior to working. Work permit applicants must provide a current business address, residential, and mailing address for the application. Any employees who work at more than one establishment shall obtain a separate work permit for each establishment and must have their work permit prior to working at any health spa location within the City of Powder Springs. Employees for the purpose of this section shall include independent contractors. Failure of an employee to possess a work

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permit as required by this section, shall be unlawful and will subject the employee and licensee to prosecution as provided in this chapter and shall be grounds for suspension or revocation of the license. A permit to work in any of the following establishments shall be required of the following:

- (1) All employees of the health spa who are not State of Georgia licensed massage therapists;
- (2) All independent contractors of the health spa who do not hold a state license.
- (b) *Permit term.* Any work permit issued under this section shall expire 12 months from the date of issuance unless suspended or revoked as provided in this section.
- (c) *Possession of permit by employees.* Employees holding permits issued pursuant to this section shall at all times during their working hours have the permits available for inspection and a government-issued photo ID that matches the name on the Work Permit.
- (d) No applicant for a massage/health spa establishment work permit shall work at a massage establishment or a health spa establishment in the county until the applicant receives, the establishment posts, and the operator has added the new permit holder to the list of employees and submitted same to the county.. A receipt issued by the county is not a valid massage/health spa establishment work permit and does not authorize the person to work in a massage establishment or health spa establishment.
- (e) It shall be unlawful for an employee whose work permit has been suspended or revoked to refuse to return the work permit to the City of Powder Springs Police Department Regulatory Service Unit or designee or to alter, conceal, deface, or destroy the work permit.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

## **Sec. 12-400. Violations of this chapter.**

The violation of any of the provisions of this chapter by the holder of a license under this chapter or the licensee's agents or employees, whether compensated or not, shall subject the holder of such license to revocation, suspension or probation of the license.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)

## **Sec. 12-401. Hearings and appeals.**

- (a) *Hearing.*
  - (1) *Due cause hearing.* The mayor and council shall hear evidence of the circumstances of the possible due cause and after said hearing may require that the health spa license be suspended for a maximum of 12 months or revoked. The mayor and council, if applicable, may consider mitigating and aggravating circumstances in considering sanctions, including but not limited to, implementation and components of written policies, that employees have or do not have health spa work permits, components of a training program, number of violations of business, number of violations of licensee, number of stores, length of time in business, compliance check was due to a complaint, identification was not checked, and any other facts deemed relative by the fact finder.
- (b) *Appeal.*

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- (1) The decision of the mayor and council is final unless appeal is made to the superior court of the county. Any aggrieved party may appeal a decision of the board of commissioners by filing a petition for writ of certiorari to the superior court within 30 days of the decision of the board of commissioners.
  - (2) In all hearings held pursuant to this section, the proceedings shall be as informal as compatible with justice, the hearing shall be expedited and normally shall not exceed 30 minutes in length, and the following procedures shall prevail:
    - a. The charges and specifications against the licensee and the response as filed by the licensee shall be read.
    - b. The city representative shall present evidence, and then the licensee shall present his evidence, with opportunity for each party to present rebuttal evidence, examination and cross examination of witnesses, and interrogation by the board of commissioners. No evidence shall be presented which is not relevant to the charges.

(Ord. No. 2023-013, § 1(Exh. A), 9-18-23)