

STATE OF GEORGIA

CITY OF HIRAM

ORDINANCE NO. 2022-10

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE XII OF THE HIRAM CITY CODE OF ORDINANCES TO CLARIFY SERVICE OF NOTICES FOR MASSAGE AND SPA ESTABLISHMENTS.

WHEREAS, the City Council is committed to ensuring economic opportunity for the citizens and businesses of the City of Hiram while also protect their general welfare and the visitors to the City; and

WHEREAS, the City Council is authorized pursuant to Section 1.3(b)(35) of the Charter of the City of Hiram to regulate the operation of massage and spa establishments and to regulate the employees of such establishments who are not licensed as massage therapists by the state as authorized by applicable laws as are or may hereafter be enacted;

WHEREAS, the City Council is authorized pursuant to Section 1.3(b)(11) of the Charter of the City of Hiram to define, regulate, or prohibit any act, practice, conduct, or use of property which may be detrimental to the health, sanitation, cleanliness, welfare, or safety of the inhabitants of the City; and

WHEREAS, it is desirable to amend delivery instructions for the notice delivery process;

NOW THEREFORE BE IT ORDAINED, by the Mayor and Council as follows:

1.

The Code of Ordinances, City of Hiram, Georgia, Chapter 12, Article XII, is hereby amended as set forth in full on the attached Exhibit A, which exhibit is incorporated herein by reference (underline text shows additions while ~~striketrough~~ text shows deletions).

2.

This ordinance shall be effective as of the date of its passage.

3.

The sections, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such illegality shall not affect any of the remaining section, subsections, paragraphs, sentences, clauses and phrases of this ordinance.

4.

All ordinances and parts of ordinances in conflict herewith are expressly repealed.

5.

All other aspects of the Code of Ordinance, City of Hiram, Georgia shall remain in full force and effect.

SO ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HIRAM THIS

1st DAY OF November, 2022.

Frank Moran
Mayor Frank Moran

Teresa Philyaw
Mayor Pro Tem Teresa Philyaw, Post 1

Kathy Bookout
Councilperson Kathy Bookout, Post 2

Melissa Bayardelle
Councilperson Melissa R. Bayardelle, Post 3

Derrick Battle
Councilperson Derrick Battle, Post 4

Doris Devey
Councilperson Doris Devey, Post 5

Attest: Melissa Chosewood
Melissa Chosewood, City Clerk



EXHIBIT A

ARTICLE XII. MASSAGE/SPA ESTABLISHMENTS

DIVISION 2. LICENSE

Sec. 12-404. 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 or exemption therefrom.
- (b) *Rules governing those engaged in business prior to article; deadline for application.* All persons already engaging in a business regulated by this article shall file an application in accordance with the terms of this article no later than December 1 of the year in which it is enacted. If the city council shall determine that any such application filed pursuant to this subsection should be denied, the applicant may continue to operate the business during any appeal process if pursued; provided, however, that at all times during which such applicant continues to operate the business the applicant shall be subject to the regulatory provisions of this article.
- (c) *Application.* An applicant for a massage/spa establishment license shall file in person with the city. The application must be executed by the person primarily responsible for the operation of the establishment, to be the named licensee. 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, if applicable, to be a named licensee. 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, accompanied by a non-refundable administrative fee of \$50.00:
 - (1) The applicant's full legal name and any other names used by the applicant in the preceding five 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, along with a secure and verifiable document as defined by O.C.G.A. § 50-36-2, and, if applicable, proof of lawful presence in the United States. 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, along with a secure and verifiable document and, if applicable, proof of lawful presence in the United States, is required.
 - (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, phone number, and hours of operation 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.
 - e. Written proof of age, in the form of a driver's license or a picture identification document issued by an agency of a state or of the federal government for each person listed in subparts a. through d. above.
 - (8) Names of all individuals having a financial interest in the business. Financial interest shall include guaranteeing a lease obligation.
 - (9) Ten years of work history for the applicant and any person listed in response to subsections (c)7 and (c)8.
 - (10) Ten years of residential history for the applicant and any person listed in response to subsections (c)7 and (c)8.
 - (11) A statement of whether the applicant or any person listed in response to subsection (c)7 or (c)8 has been an owner, director, officer, partner, member, employee, or shareholder of a massage establishment or spa establishment that has, (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.
 - (12) A statement of whether the applicant or any person listed in response to subsection (c)7 or (c)8 has been charged with, 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 violation, arrest and/or conviction.
 - (13) A statement of whether the applicant or any person listed in response to subsection (c)7 or (c)8 has had their state-issued massage therapy license suspended, revoked or placed on probation, and if so, the state which issued the license, license number, summary of why, and summary of the action taken against the license.
 - (14) Identification/ designation of a registered agent ~~A sworn and notarized statement of a registered agent who is a resident of Paulding County, Georgia and at least 18 years of age, required to be designated by a licensee to receive for the purpose of receiving any process, notice or demand required or permitted by law or under this article to be served upon the applicant.~~
 - (15) 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.
 - (16) For every person on the premises who offers, or will offer, services for which a license under O.C.G.A. §§ 43-24A-1, et seq. is required, a copy of the state license for each such person as well as a color photograph, no smaller than two inches by two inches, showing the face, neck, and shoulders of each such person; or, if there are none, a statement certifying that no person on the premises offers, or will

offer, services for which said person is required to be licensed by the State of Georgia pursuant to O.C.G.A. §§ 43-24A-1, et seq.

- (17) Executed consent forms authorizing the city to conduct background investigations, including criminal background investigations and fingerprint analysis and investigation, on the applicant and each individual listed in subsections (c)7 and (c)8, unless such individual provides proof of licensure as a massage therapist in Georgia.
- (18) A complete set of fingerprints of the applicant, the operator(s), the owner(s), those individuals listed in subsections (c)(7) and (c)(8), unless he/she provides proof of licensure as a massage therapist in Georgia:
- a. *Authority.* This subsection is enacted pursuant to O.C.G.A. § 35-3-35(a)(1.2), the Georgia Umbrella Statute entitled "dissemination of information to public agencies, political subdivisions, authorities, and instrumentalities."
 - b. *Fingerprinting required.* An individual seeking to receive a massage/spa establishment license or a massage/spa work permit shall be fingerprinted as a condition of submitting an application for said license or permit. By filing such application, the applicant consents to the city obtaining their criminal history record information (CHRI) from the Georgia Crime Information Center (GCIC) and the Federal Bureau of Investigation (FBI).
 - c. *Access authorized; usage regulations.* The city is hereby authorized to access national criminal history record information pursuant to O.C.G.A. § 35-3-35(a)(1.2).
 1. Information obtained and handled for any purposes pursuant to this subsection shall comply with all state laws and the Federal Privacy Act.
 2. No information given as part of the request for a criminal history and no record obtained pursuant to this section may be entered on any database.
 3. No information given or obtained pursuant to this section shall be subject to the provisions of the Georgia Open Records Act.
 - d. *Administration; fees; procedures.*
 1. Applicant shall provide his/her fingerprints, which may be taken by the city police department or may be taken by the county sheriff's office if the city police department is unable to do so.
 2. The applicant shall bear the cost of: (1) fingerprinting if carried out by the county sheriff; (2) the charge by the GBI and the FBI for the CHRI history at their latest rate, paid to the city by certified or cashier's check or money order; and (3) an administrative fee allowed by statute to be charged by the city, which shall be the maximum allowed by statute, which is currently \$20.00, which fee shall include fingerprinting when carried out by the city police department.
 3. Upon receipt of the fingerprints and the appropriate fees, the City will transmit said fingerprints and appropriate fees (unless a satisfactory billing arrangement has been entered into between the city police department and the GCIC and/or FBI) to the GCIC. As provided by law, the GCIC will compare the subject's fingerprints against its criminal file and submit the fingerprints to the FBI for a comparison with nation-wide records, unless submission to the FBI is automatic pursuant to the use of live-scan. The results of the FBI check will be returned based on its current procedure, presently being directly to the city police department if submissions are made manually to the GCIC, or electronically from both the GBI and FBI where submissions are made electronically to the GCIC.

-
4. In compliance with federal law 95-544, which provides for the rendering of a "fitness determination," the city will decide whether the record applicant has been convicted of, or is under pending indictment for enumerated disqualifiers, as set forth within this chapter.
 5. A person who has consented to the city for a criminal history based on fingerprinting record may request and receive a copy of the criminal history record report from the city at no additional charge. Should the person seek to amend or correct the record, he or she shall be responsible for contacting the GCIC as to state records and/or the FBI concerning records from other jurisdictions maintained in its file.

(19) Any additional information/paperwork deemed necessary by the city to properly evaluate the request for a license.

(Ord. 2018-08, § 1 (Exh. A), 10-2-2018; Ord. No. 2019-08, § 2(Exh. B), 8-6-2019)

(Ord. 2018-08, § 1 (Exh. A), 10-2-2018)

DIVISION 3. BUSINESS OPERATION

Sec. 12-410. Hearings.

- (a) The city manager shall hear all matters relating to licenses and permits under this chapter, including, but not being limited to, suspensions, revocations, and any other matters affecting such licenses and permits.
- (b) Licensees or permit holders shall be given written notice of the date, time, place, and purpose when the matter at issue will be heard. The applicant, licensee, or permit holder shall be afforded the opportunity to be heard and present evidence. Ten calendar days' notice shall be required.
 1. Licensees shall be served with written notice of a show cause hearing by personal service on the registered agent by the police chief or his designee. If personal service upon a registered agent cannot be accomplished or the registered agent is otherwise unavailable, it shall be sufficient that the written notice be left with the licensee, manager on duty of the establishment, or a person otherwise responsible for the establishment or activity.
 2. Work permit holders and denied license applicants shall be served with written notice of a show cause hearing at the mailing address listed in the application by depositing the same in the United States mail, properly registered or certified and with a return receipt requested, or deliver of the same by statutory overnight delivery in accordance with O.C.G.A. Section 9-10-12(b). Service shall be completed upon mailing.
- (c) Upon close of the hearing, a decision shall be rendered in writing by the city manager and issued no later than within 48 hours of the meeting absent the occurrence of circumstances beyond the reasonable control of the city manager.
- (d) An applicant whose application has been denied, or a licensee or permit holder whose license or permit has been suspended, revoked or placed on probation by the city manager may appeal to the governing authority by filing a written notice of appeal within five business days of the adverse decision or action. Such notice shall be provided to the city clerk. The appeal shall be placed on the agenda of the next governing authority meeting occurring at least ten days after the notice is received. The governing authority shall be provided a copy of all evidence heard by the city manager, along with a copy of the city manager's written decision. The applicant, licensee or permit holder may make a statement on their behalf before the governing authority, but no new evidence shall be taken. A vote on the appeal shall be taken either on the date of appeal hearing

or at the next subsequent regular meeting of the governing authority. The decision of the governing authority shall be based on the evidence and standards of this chapter. If the governing authority determines the city manager acted in accordance with the standards of this chapter, it shall affirm his decision. If the governing authority determines the city manager acted contrary to the standards of this chapter, it shall overturn his decision and remand back to the city manager for a corrected decision.

- (e) An applicant or licensee who is dissatisfied with the decision of the governing authority may appeal by filing for writ of certiorari with the superior court Paulding County, Georgia.

(Ord. 2018-08, § 1 (Exh. A), 10-2-2018)