

CHAPTER 26 - LICENSES, PERMITS, AND MISCELLANEOUS REGULATIONS

ARTICLE I. - IN GENERAL

Sec. 26-1. - Treasure hunts.

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

- (1) *Treasure hunt* means advertising campaigns conducted for the purpose of promoting the sale of any merchandise, commodity or service of any business or profession conducted for private or corporate gain, whereby some article, thing or token is hidden within the corporate limits of the Town and clues as to the locations of such article, thing or token are given by any form of advertising, either by newspaper, radio or television or in any other manner, but shall not include private social parties involving no element of commerce or gain
- (2) It shall be unlawful for any person to conduct or aid and abet in the conducting of any treasure hunt as defined in this section within the corporate limits of the Town.

Secs. 26-2—26-20. - Reserved.

ARTICLE II. - ADULT ESTABLISHMENTS

Sec. 26-21. - Findings.

- (1) The Council of the Town is deeply and profoundly concerned about the many types of criminal activities frequently engendered by adult establishments.
- (2) The Town is becoming an increasingly attractive place for the location of commercial enterprises and of residences for families, and the Council is committed to adopting ordinances designed to protect the quality of life for its constituents.
- (3) The Council desires to establish policies that provide the maximum protection of the general welfare, health, morals, and safety of the residents of the Town.
- (4) The governing authority of each municipal corporation is authorized to enact ordinances which have the effect of restricting the operation of adult bookstores and video stores to areas zoned for commercial or industrial purposes, provided in O.C.G.A. § 36-60-3.
- (5) Among the undesirable community conditions identified with live nude entertainment at which alcohol is served or consumed are depression of property values in the surrounding neighborhood, increased expenditure for the allocation of law enforcement personnel to preserve law and order, increased burden on the judicial system as a consequence of the criminal behavior, and acceleration of community blight.
- (6) The Council further finds it has an important governmental interest in reducing crime and protecting surrounding properties from adverse impacts, which interest is unrelated to the suppression of speech.
- (7) It is the intent of the Town Council to enact an ordinance, narrowly tailored, sufficient to combat the undesirable secondary effects of adult entertainment businesses, including the serving and consumption of alcoholic beverages at adult entertainment facilities.
- (8) The Town Council desires to regulate the adult entertainment businesses within the Town limits. Notwithstanding, this article is not to be construed as an endorsement from the Town of these establishments. The Town Council understands that adult entertainment businesses are actually protected under the free speech clause of the First Amendment of the Constitution of the United States for their role in communicating "erotic speech." The courts allow communities to regulate speech, not based on the content of the speech, but in time, place, and manner in which it is presented.
- (9) It is the intent of this article to regulate the time, place, and manner of the operation of businesses or facilities that offer adult entertainment as defined in section 26-22. It is well established and has been the experience of other communities in the state and throughout the United States that adult entertainment, which includes public nudity, has been associated with and may encourage disorderly conduct, prostitution and sexual assault. This

section advances the substantial government interest in promoting and protecting public health, safety, and general welfare, maintaining law and order and prohibiting public nudity. The section is narrowly constructed to protect the First Amendment rights of citizens of the Town while furthering the substantial governmental interest of combating the secondary effects of public nudity and adult entertainment from areas and uses of the community that are incompatible. Areas and uses that are to be protected from adult entertainment include, but are not limited to, residential, churches, day care centers, libraries, recreational facilities, and schools.

- (10) Among the undesirable community conditions identified in other communities with the commercial combination of live nudity and alcohol consumption or sale, commercial nudity in general, and cinematographic or videographic adult entertainment are depression of property values and acceleration of community blight in the surrounding neighborhood, increased allocation of and expenditure for law enforcement personnel to preserve law and order, and increased burden on the judicial system as a consequence of the criminal behavior described in this article. The Town Council finds it is reasonable to believe that some or all of these undesirable community conditions are occurring, and will continue to occur in the Town.
- (11) The Town Council further finds that other forms of adult entertainment including, but not limited to, adult bookstores, adult novelty shops, adult video stores, peep shows, and adult theaters have an adverse effect upon the quality of life in surrounding communities.
- (12) Therefore, the Town Council finds that it is in the best interests of the health, welfare, safety and morals of the community and the preservation of its businesses, neighborhoods, and of churches, schools, residential areas, public parks and children's day care facilities to prevent or reduce the adverse impacts of adult establishments by restricting hours of operation, prohibiting alcohol sale or consumption, and restricting the distance from other adult establishments and restricting the distance from residential areas, schools, public parks, churches, and children's day care facilities.
- (13) The Town Council finds that licensing and regulations are necessary for any adult establishment.
- (14) The Town Council finds that these regulations promote the public welfare by furthering legitimate public and governmental interests including, but not limited to, reducing criminal activity and protecting against or eliminating undesirable activities impacting adversely the community conditions and further finds that such will not infringe upon the protected Constitutional rights of freedom of speech or expression. To that end, the Town Council directed the Town attorney to prepare this article.
- (15) The Town Council hereby re-adopts and incorporates these pre-enactment findings and evidence into the adoption of the following ordinances.

Sec. 26-22. - Definitions.

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

Adult bookstore means a commercial establishment or facility in the Town that maintains 25 percent or more of its floor area for the display, sale, and/or rental of the following items (aisles and walkways used to access these items shall be included in "floor area" maintained for the display, sale, and/or rental of the items):

- (1) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, videocassettes, CDs, DVDs or other video reproductions, or slides or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas, as defined herein; or
- (2) Instruments, devices, novelties, toys or other paraphernalia that are designed for use in connection with specified sexual activities as defined herein or otherwise emulate, simulate, or represent "specified anatomical areas" as defined herein.

Adult entertainer means any person employed by an adult entertainment establishment who exposes his or her specified anatomical areas, as defined herein, on the premises of the establishment. For purposes of this article, adult entertainers include employees as well as independent contractors.

Adult entertainment means live conduct characterized by the display of specified anatomical areas. None of the definitions contained in this section shall be construed to permit any act that is in violation of any Town, county or state law

Adult entertainment establishment means any establishment or facility in Trion where adult entertainment is regularly sponsored, allowed, presented, sold, or offered to the public.

Adult establishment means any adult bookstore, adult entertainment establishment, adult motion picture theater, or adult motion picture arcade.

Adult motion picture arcade means a commercial establishment to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices are regularly maintained to show images to five or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis upon matter displaying specified sexual activities or specified anatomical areas.

Adult motion picture theater means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five persons for any form of consideration.

Church, temple or place of worship means a facility in which persons regularly assemble for religious ceremonies. This shall include, on the same lot, accessory structures and uses such as minister's and caretaker's residences and other uses identified under the provisions for administrative and use permits.

Day care facility means a use in which shelter, care, and supervision for seven or more persons on a regular basis away from their residence for less than 24 hours a day. A day care facility may provide basic educational instruction. The term shall include nursery school, kindergarten, early learning center, play school, preschool, and group day care home.

Golf course means a use of land for playing the game of golf. The term shall not include miniature golf but may include a country club and a driving range as an accessory use.

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

Library means a place set apart to contain books and other literary material for reading, study, or reference, for use by members of a society or the general public.

Minor means any person who has not attained the age of 18 years.

Operator means the manager or other person principally in charge of an adult establishment.

Owner means any individual or entity holding more than a 30 percent interest in any sole proprietorship, partnership, or member-managed limited liability company controlling, operating, or owning an adult establishment.

Park means any lands or facility owned, operated, controlled or managed by any county, Town or federal government or any governmental entity in and upon which recreational activities or places are provided for the recreation and enjoyment of the general public.

Premises means the building for which or upon which a license is issued hereunder and the terms "premises" and "building" are further defined as a structure or edifice enclosing a space within its exterior walls, and covered with a roof or outside top covering of a building or connected or attached or joined with or by a wall, roof, walkway or breezeway. Any structure or structures of any nature that share a wall, roof, walkway or breezeway shall be considered a single premises and building for the purposes of this Code. No building may be subdivided for the purpose of creating more than one premises for the purposes of this Code. In addition, the term "premises" shall include the land and real estate as well as its appurtenances, including the entire parcel together with the boundaries thereof, upon which the licensed premises sits as well as the area of land surrounding said premises.

Recreational court, private means an improved area designed and intended for the playing of a game or event such as basketball or tennis, and which serves a single-family dwelling(s), duplex dwellings and/or multifamily dwellings, or combinations of dwelling types, including such improved areas which are owned and/or controlled by a neighborhood club or similar organization. A basketball goal adjoining a driveway of typical residential driveway dimensions shall not constitute a recreational court.

Recreational court, public means an improved area designed and intended for the playing of a game or event such as basketball or tennis, and is operated as a business or as a club unless such club is a neighborhood club or similar organization identified under recreational court, private.

Recreation fields means an outside area designed and equipped for the conduct of sports and leisure time activities including, but not limited to, softball, soccer, football, and field hockey.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

School means any educational facility established under the laws of the state (and usually regulated in matters of detail by local authorities), in the various districts, counties, or towns, maintained at the public expense by taxation, and open, usually without charge, to all residents of the Town, Town or other district or private facility which has students regularly attending classes and which teach subjects commonly taught in these schools of this state.

Specified anatomical areas shall include any of the following:

- (1) Human genitals or pubic region, buttock, or female breast below a point immediately above the top of the areola; or
- (2) Human male genitalia in a discernibly turgid state, even if completely and opaquely covered.
- (3) *Specified criminal activities* shall include any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
 1. Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;
 2. Prostitution, keeping a place of prostitution, pimping, or pandering;
 3. Obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;
 4. Any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;
 5. Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
 6. Any offense in another jurisdiction that, had the predicate act(s) been committed in Georgia, would have constituted any of the foregoing offenses.

Specified sexual activities shall include any of the following:

- (1) Sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, masturbation, or excretory functions in the context of sexual relations, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty;
- (2) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence;
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;
- (4) Masochism, erotic or sexually oriented torture, beating or the inflicting of pain;
- (5) Erotic or lewd touching, fondling or other sexual contact with an animal by a human being; or

Human excretion, urination, menstruation, vaginal or anal irrigation.

Sec. 26-23. - Location and distance requirements.

- (1) Location restrictions for adult establishments are as follows:
 - (a) All boundary lines of the property containing an adult establishment as filed must be located at least 300 feet from the properties listed below:

- (b) The property line of R-1, R-2, O-I, C-1, C-2, C-N zoned property, or property conditioned for residential purposes; and
 - (c) The property line of any public park, public recreational fields, public recreational courts, public golf course, public playground, public playing field, government building owned and/or occupied by such government, library, civic center, public or private school, commercial day care facility or church.
- (2) For the measurements required by subsection 26-23(b) as amended, the distance shall be measured from the structure or tenant space of the applicable adult establishment to the closest property line of the zoned property or uses outlined in this section.
 - (3) No adult establishment shall be located any closer than 400 feet from any other adult establishment. For the measurement required by this subsection, distance shall be measured from the nearest entrance to the public of the structure or tenant space in which the applicant is located to the nearest entrance to the public of the structure or tenant space in which the other adult establishment is located.

Sec. 26-24. - Rules of operation.

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

Fixed stage shall be defined as a raised floor area designed exclusively for use by adult entertainers at least four feet from the seating area of patrons, and on which no patron shall be allowed

Full lighted shall mean illumination equal to three and one-half foot candles per square foot.

Compliance with rules. Adult establishments, and any person, firm, partnership, or corporation licensed hereunder, shall comply with the following rules and regulations pertaining to the operation of the adult establishment and governing conduct on the premises of the establishment:

- (1) No adult establishment shall operate between the hours of 1:00 a.m. to 12:00 noon, Monday through Saturday.
- (2) No adult establishment shall operate on Sunday.
- (3) No person under the age of 18 years shall be permitted on the premises of an adult establishment.
- (4) No adult entertainment shall occur within four feet of any patron or in any location other than on a fixed stage.
- (5) No patron, customer or guest shall be permitted to have any physical contact with any part of the body or clothing of any adult entertainer.
- (6) The license shall be displayed in a prominent place on the premises at all times.
- (7) No licensee or his employees or contractors shall permit any alcoholic beverages to be served or consumed on the premises.
- (8) All areas of an adult establishment shall be fully lighted at all times patrons are present on the premises.
- (9) All adult entertainment which is licensed or permitted by this article shall be carried on inside a closed building with all windows and doors covered so that the activities carried on inside cannot be viewed from the immediate areas surrounding the outside of the building.

License revocation. Violations of these rules and regulations may result in the revocation of the license.

Sec. 26-25. - Adult establishment work permit.

- (1) No person, including, but not limited to, cashiers, stocking clerks, performers, dancers, adult entertainers, bartenders, barmaids, bouncers, valets, dj's, bar backs, waiters, waitresses, bathroom attendants and musicians, working either as an independent contractor or as an employee at any establishment holding a license hereunder shall begin working at such establishment, either temporarily or permanently, until such person has made application for an adult establishment work permit (hereinafter referred to as "work permit") to the Town police

department and has been issued an annual work permit or a temporary work permit by the Town police department. Upon the filing of a complete application for a work permit, the Town police department shall immediately issue a temporary work permit to the applicant if the applicant seeks to work in a licensed adult establishment and the completed application, on its face, indicates that the applicant is eligible for an annual work permit. The temporary work permit shall expire upon the final decision of the Town to deny or grant an annual work permit. Within 30 days of receipt of a completed application, the Town police department shall either issue an annual work permit or a written notice of non-clearance. In the event the Town police department has not issued a work permit or has not issued a written notice of non-clearance within the 30-day period following receipt of a completed application, the applicant shall be deemed to have been granted an annual work permit hereunder and may begin work at the applicable adult establishment.

- (2) All persons required to obtain a work permit hereunder, prior to the date of their first work in an adult establishment, shall report to the Town police department for purposes of making application for a work permit to work at an adult establishment. The application shall be provided by the Town police department and shall be signed by the applicant. An application shall be considered complete when it contains the following:
 - (a) The applicant's full legal name and any other names used by the applicant in the preceding five years;
 - (b) Current business address or another mailing address for the applicant;
 - (c) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency;
 - (d) The adult establishment work permit application fee;
 - (e) A statement of whether an applicant has been convicted of or has pled guilty or 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 as well as the dates of conviction and release from confinement, where applicable; and
 - (f) A complete set of fingerprints taken by the Town police department. The Town police department shall provide fingerprinting service upon the request of the applicant during regular office hours.
 - (g) The Town police department shall conduct a criminal investigation to the extent allowed by law on any person making application for an adult establishment work permit under this section.
- (3) Within 30 days of receiving a completed application, the Town police department shall issue an annual work permit to an applicant unless:
 - (a) The applicant is less than 18 years of age;
 - (b) The applicant has failed to provide information as required by this article for issuance of a work permit or has falsely answered a question or request for information on the application form;
 - (c) The application fee for an adult establishment work permit required by this article has not been paid; or
 - (d) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.
- (4) If the applicant is deemed ineligible to receive a work permit hereunder based on any of the eligibility requirements contained in subsection (c), the Town police department shall issue a written notice of non-clearance to the applicant stating that the person is ineligible for such work permit and explaining the reasons therefore.
- (5) Any annual work permit issued hereunder shall expire 12 months from the date of issue shown on the work permit. The person issued an adult establishment work permit shall make application for renewal at least 60 days prior to the expiration of the work permit in order to continue working at the adult establishment after expiration of the 12-month issue period. The Town Council shall prescribe a reasonable application fee for an annual adult establishment work permit.
- (6) Any person that has been granted a work permit hereunder shall bring such work permit to the applicable adult establishment and shall make it available to any member of the Town police department upon request on the

premises of an adult establishment. If the work permit is revoked or suspended, the work permit shall be returned to the Town police department upon request. It shall be unlawful for any person to transfer, alter, conceal, deface or otherwise destroy the work permit or to refuse to return a work permit to the Town police department in the event of suspension, revocation or expiration.

- (7) If a person, subsequent to the issuance of a work permit hereunder, violates any provision of this article or otherwise becomes ineligible hereunder to receive a work permit, the Town police department shall issue a written notice of intent to suspend or revoke the work permit.
- (a) When the Town police department issues a written notice of non-clearance or a written notice of intent to suspend or revoke a work permit, the Town police department shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or permittee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Town police department for the respondent. The notice shall also set forth the following: The respondent shall have ten days after the delivery of the written notice to submit, at the office of the Town clerk, a written request for a hearing.
- (b) If the respondent does not request a hearing within said ten days, the Town police department's written notice shall become a final denial, suspension, or revocation, as the case may be, on the 30th day after it is issued, and shall be subject to the provisions of subsection (4) below.
- (c) If the respondent does make a written request for a hearing within said ten days, then the Town clerk shall, within ten days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten days nor more than 20 days after the date that the hearing notice is issued. The Town shall provide for the hearing to be transcribed. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Town police department's witnesses. The Town police department shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the work permit. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this article, to the respondent within five days after the hearing. If the decision is to deny, suspend, or revoke the work permit, the decision shall advise the respondent of the right to appeal such decision to the superior court by writ of certiorari, and the decision shall not become effective until the 30th day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the work permit, the hearing officer shall, contemporaneously with the issuance of the decision, order the Town police department to immediately withdraw the notice and to notify the respondent in writing by certified mail of such action. Where applicable, the Town police department shall contemporaneously therewith issue the annual work permit to the applicant.
- (d) If any court action challenging a work permit decision is initiated, the Town shall prepare and transmit to the court a transcript of the hearing within 30 days after receiving written notice of the filing of the court action. The Town shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any person lawfully working at an adult establishment on the date on which the completed work permit is filed with the Town police department. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Town's enforcement of any denial, suspension, or revocation of a temporary or annual work permit, the Town police department shall immediately issue the respondent a provisional work permit. The provisional work permit shall allow the respondent to continue employment in an adult establishment and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the Town's enforcement.

Sec. 26-26. - License required.

- (1) It shall be unlawful for any person, association, partnership, or corporation to operate, engage in, conduct, or carry on, in or upon any premises within the Town, an adult establishment as defined in this article without an annual license to do so.
- (2) The issuance of such an annual license shall not be deemed to authorize, condone or make legal any activity thereunder if the same is deemed illegal or unlawful under the laws of the state or the United States.

- (3) Any person, firm, partnership, or corporation desiring to operate an adult establishment within the territorial boundaries of the Town shall be required to file for a new license each year, with all supporting documentation pursuant to subsection 26-28(b).

Sec. 26-27. - On-premises operator required.

An adult establishment shall have one or more designated persons to serve as an on-premises operator. An on-premises operator shall be principally in charge of the establishment and shall be located on the premises during all operating hours.

Sec. 26-28. - Application process and qualifications.

Process. Any person, association, partnership or corporation desiring to obtain a license to operate, engage in, conduct, or carry on any adult establishment in the Town shall make application to the Mayor or designee of the Town. Such application shall be made on forms furnished by the Town, shall be made in the name of the adult establishment by an applicant who is a natural person and an agent of the adult establishment and shall include the names of the operators as defined herein and of the owners as defined herein. If the adult establishment is a corporation, then the agent for purposes of making application for a license hereunder shall be an officer of the corporation. If the adult establishment is a partnership, the agent for such purposes shall be a general partner. At the time of submitting such application, a nonrefundable fee payable in cash or by certified check in the amount of \$1,000.00 shall be paid to the Mayor or designee to defray, in part, the cost of investigation and report required by this article. The Mayor or designee shall issue a receipt showing that such application fee has been paid. The filing of an application for license does not authorize the operation of, engaging in, conducting or carrying on of any new adult establishment. If a completed application and fee is submitted for a preexisting adult establishment that is lawfully operating in the Town and the application, on its face, indicates that the applicant is entitled to an annual adult establishment license, the Mayor shall immediately issue a temporary license to the applicant. The temporary license shall expire upon the final decision of the Town to deny or grant an annual license.

Contents. An application for an adult establishment license shall be considered complete when it contains the following information:

The full true name and any other names used by the applicant, the operators and owners in the preceding five years;
The current business address or other mailing address of the applicant, the operators and owners;
Written proof of age in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency, for each applicant, operator and owner;

- (1) The business license history of the adult establishment seeking a license and whether such establishment, in previous operations in this or any other location under license, has had such license or permit for an adult entertainment business or similar type of business revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of revocation or suspension;
- (2) If the application is made on behalf of a corporation, the name of the corporation, exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation. If the application is on behalf of a limited partnership, a copy of the certificate of limited partnership filed with the county clerk of superior court shall be provided. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply;
- (3) For each applicant, operator, and owner, a statement of whether the person has been convicted of or has pled guilty or 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 as well as the dates of conviction and release from confinement, where applicable. Each person required to disclose convictions hereunder shall also provide a signed and notarized consent, on forms prescribed by the state crime information center and made available at the Town police department, authorizing the release of his or her criminal records to the permits unit of the Town police department;
- (4) A complete set of fingerprints of the applicant and the operators, taken by the Town police department. The Town police department shall provide fingerprinting service upon the request of the applicant(s) or operator(s) during regular office hours;
- (5) The address of the premises where the adult establishment will be operated, engaged in, conducted, or carried on;

- (6) The identity of the person(s) designated to serve as an on-premises operator who shall be principally in charge of the establishment and shall be located on the premises during all operating hours;
- (7) Each application for an adult establishment license shall be personally verified and acknowledged under oath to be true and correct by:
 - a. The individual, if application is made on behalf of an individual;
 - b. The general partner, if application is made on behalf of a partnership;
 - c. The president of the corporation, if application is made on behalf of a corporation;
 - d. The managing member, if application is made on behalf of a limited liability company; or
 - e. The fire chief, if application is made on behalf of any other organization or association.

Appearance by applicant. The applicant shall personally appear before the Mayor or designee and produce proof that the nonrefundable \$1,000.00 application fee has been paid and shall present the application containing the aforementioned and described information.

Investigation; standards for granting of license. The Town shall have 30 days from the date of actual receipt of a completed application as set forth in subsection (b) of this section, to investigate the facts provided in the application and the background of the applicant, the operators and the owners. The Mayor or designee of the Town shall stamp the date of actual receipt of each application on the first page thereof and notify the applicant of the actual receipt of the application within five business days of actual receipt of such application. The Mayor or designee shall approve or deny any application for an adult establishment license within 30 days of actual receipt of such properly completed application. In the event the Mayor has not granted a license or has not issued a written notice of intent to deny the license within the 30-day period following the date of complete application, the annual adult establishment license shall be deemed to have been granted. The application for an adult establishment license shall be granted unless the Mayor or designee finds:

- (1) The required \$1,000.00 fee has not been paid;
- (2) The applicant has made a material misrepresentation in the application or has failed to provide information required by this article for issuance of license;
- (3) The applicant or an operator or owner has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article;
- (4) The applicant or any of the operators or owners has had an adult establishment license or other similar license or permit revoked for cause by the Town, the county or any other county, or municipality located in or out of this state within the preceding five years prior to the date of application;
- (5) An applicant, operator, or owner is less than 18 years of age;
- (6) The business has failed to identify an operator as defined herein that will be on the premises at all times during which the business is open; or
- (7) The location of the proposed premises does not comply with any requirement set forth in section 26-23.

Sec. 26-29. - Conduct or activities prohibited.

Employment of minors or unpermitted persons. No adult establishment shall employ or contract with a person under the age of 18 years or an adult entertainer who has not obtained a permit pursuant to this article.

Engaging in specified sexual activities prohibited. No adult entertainer, other employee, patron or other person at an adult establishment shall be allowed to engage in any specified sexual activity as defined herein on the premises of any adult establishment.

Public indecency prohibited. No adult entertainer, other employee, patron or other person at an adult establishment shall, while on the premises of an adult establishment, commit the offense of public indecency as defined in O.C.G.A. § 16-6-8.

Private rooms prohibited. It shall be unlawful for any employee or independent contractor to engage in adult entertainment or to expose any specified anatomical areas in the presence of a patron in any separate area including, but not limited to, any room or booth, within an adult establishment to which entry or access is blocked or obscured by any door, curtain or other barrier separating entry to such area from any other area of the establishment.

Physical layout requirements of booths, rooms, etc. Any adult entertainment business having available for customers, patrons, or members any booth, room, or cubicle for the private viewing of any video or motion picture must comply with the following requirements:

- (1) *Access.* Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the video store, and shall be unobstructed by any curtain, door, lock, or other control-type or view-obstructing devices or materials.
- (2) *Construction.* Every booth, room, or cubicle shall meet the following construction requirements:
 - a. Each booth, room, or cubicle shall be separated from adjacent booths, rooms and cubicles and any nonpublic areas by a wall.
 - b. Each booth, room, or cubicle shall have at least one side totally open to a public lighted area or aisle so that there is an unobstructed view of anyone occupying the booth from the area in which the cash register for the video store is located.
 - c. All walls shall be solid and without openings, extended from the floor to a height of not less than six feet and be light colored, nonabsorbent, smooth-textured and easily cleanable.
 - d. The floor must be light colored, nonabsorbent, smooth-textured and easily cleaned.
 - e. The lighting level of each booth, room, or cubicle when not in use shall be a minimum of ten candles at all times, as measured from the floor.
- (3) *Occupants.* Only one individual shall occupy a booth, room, or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth, room, or cubicle. No individual shall damage or deface any portion of the booth, room, or cubicle.

Sec. 26-30. - Scienter required to prove violation or business licensee liability.

This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by a person working on the premises of the adult establishment that constitutes grounds for suspension or revocation of that person's work permit shall be imputed to the adult establishment licensee for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director, general partner, managing member, or operator of the adult establishment knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

Sec. 26-31. - Unlawful operation declared nuisance.

Any adult establishment operated, conducted or maintained contrary to the provisions of this article shall be and the same is hereby declared to be unlawful and a public nuisance. The Town may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or injunction thereof in the manner provided by law. The Town may take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such adult establishment and restrain and enjoin any person from operating, engaging in, conducting or carrying on an adult establishment contrary to the provisions of this article.

Sec. 26-32. - Inspection of adult establishment.

The Town police department shall have the authority to periodically inspect the portions of adult establishments where patrons are permitted, to determine compliance with all provisions of this article, during those times when the adult establishment is occupied by patrons or is otherwise open to the public.

Sec. 26-33. - Denial, suspension or revocation of license; hearing.

Grounds

- (1) A license may be denied to persons or entities that have submitted an incomplete application or that have failed to satisfy any of the requirements of section 26-28.
- (2) Any of the following shall be grounds for suspension or revocation of a license:
 - a. The making of any statement on an application for a license issued hereunder which is material and is later found to be false;
 - b. Violation of any of the regulations or prohibitions of this article; or
 - c. With respect to the applicant, operators and owners, conviction of or a plea of guilty or nolo contendere to any specified criminal activity, as defined in this article.
- (3) Mayor or his or her designee shall issue a written notice of intent to deny, suspend, or revoke an adult establishment license when the Mayor or designee finds there are grounds for the denial, suspension, or revocation of the license

Procedure.

- (1) When the Town clerk issues a written notice of intent to deny, suspend, or revoke a license, the Town clerk shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Town clerk for the respondent. The notice shall also set forth the following: The respondent shall have ten days after the delivery of the written notice to submit, at the office of the Town clerk, a written request for a hearing.
- (2) If the respondent does not request a hearing within said ten days, the Town clerk's written notice shall become a final denial, suspension, or revocation, as the case may be, on the 30th day after it is issued, and shall be subject to the provisions of subsection (4) below.
- (3) If the respondent does make a written request for a hearing within said ten days, then the Town clerk shall, within ten days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten days nor more than 20 days after the date that the hearing notice is issued. The Town shall provide for the hearing to be transcribed. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Town clerk's witnesses. The Town clerk shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this article, to the respondent within five days after the hearing. If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to the superior court by writ of certiorari, and the decision shall not become effective until the 30th day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the Town clerk to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the Town clerk shall contemporaneously therewith issue the license to the applicant.
- (4) If any court action challenging a licensing decision is initiated, the Town shall prepare and transmit to the court a transcript of the hearing within 30 days after receiving written notice of the filing of the court action. The Town shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any adult establishment that is lawfully operating as an adult establishment on the date on which the completed license application is filed with the Mayor: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Town's enforcement of any denial, suspension, or revocation of a temporary license or annual license, the Mayor shall immediately issue the respondent a provisional license. The provisional license shall allow the

respondent to continue operation of the adult establishment and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the Town's enforcement.

Sec. 26-34. - Nonrenewability; change of ownership of establishment.

- (1) All persons, firms, companies, or corporations, including limited liability corporations and professional corporations, licensed to operate adult businesses in the municipal limits of the Town previously registered with the county shall be granted an additional 45 days to file a new application for a license to operate said adult establishment with the Town following the effective date of the ordinance from which this article is derived.
- (2) All licenses granted after August 31, 2012, and under this chapter shall expire on December 31 of each year, commencing December 31, 2012. Licensees shall be required to file a new application, with the requisite \$1,000.00 fee, with the Town clerk or designee on the form provided for a new license for the ensuing year. Such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held. For any applications for a new license after January 1, 2012, an application must be filed on or before November 30 of each year. Any applications received after November 30 shall pay, in addition to the annual fee, a late charge of 20 percent. If a license application is received after January 1, reasonable investigative and administrative costs will be assessed as may be prescribed from time to time by the Town Council.
- (3) All licenses granted under this article shall be for the calendar year, and the full license fee must be paid for a license application filed prior to July 1 of the license year. One-half of a full license fee shall be paid for any license application filed after July 1 of the license year.
- (4) Any person applying for a new license issued under this article who shall pay the required fee for an annual license, or any portion thereof, after January 1, shall, in addition to the annual fee and late charges, pay simple interest on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.
- (5) A change of ownership shall require a new license.

Sec. 26-35. - Fee.

The application fee for the adult establishment license shall be \$1,000.00 and shall be paid as set forth in this article.

Sec. 26-36. - Compliance with applicable laws by licensee.

Any person, firm, partnership, or corporation who holds an adult establishment license must also display the adult establishment license issued hereunder in a conspicuous location. Failure to display the adult establishment license in a conspicuous location may result in a fine of \$50.00.

Sec. 26-37. - Nonconforming adult establishment uses/amortization.

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

Financial expenditures means the capital outlay made by the applicant to establish the adult establishment, exclusive of the fair market value of the building and property in and on which such use is located and site improvements unrelated to the nonconforming adult establishment, i.e., paving, fencing, etc.

Nonconforming adult establishment use means an adult establishment use which:

- (1) Was lawful and valid when established, as evidenced by a certificate of occupancy as provided in article 23, section 23.1 of the Town zoning ordinance; and
- (2) Does not conform to one or more location requirements of this article or is not in a zoning district where a new adult establishment use would be allowed.
 - (a) Any adult establishment that is a nonconforming use shall not be expanded or otherwise altered outside the scope of the nonconformity currently existing.

- (b) All nonconforming adult establishment uses shall terminate by December 31, 2010, except that a nonconforming adult establishment use may be continued beyond that date for a limited period of time authorized by the Town Council, provided that:
- (i) An application has been made by the owner of such establishment to the Town Council within 120 days after October 1, 2012;
 - (ii) The Town Council finds in connection with such establishment that:
 - The applicant had made, prior to the nonconformity, financial expenditures related to the nonconformity;
 - The applicant had not recovered 90 percent of the financial expenditures related to the nonconforming; and
 - The period for which such establishment may be permitted to continue is the minimum period sufficient for the applicant to recover substantially all of the financial expenditures incurred related to the nonconformity, but not more than five years;
- (c) In order to secure an extension of time, the written application for such extension must set forth the following information:
- (i) The amount of the financial expenditures for improvements in the existing enterprise through the date of passage and approval of the ordinance from which this article was originally derived;
 - (ii) The date each improvement was made with proof of expenditure;
 - (iii) The amount of such financial expenditures that has been or will be realized through the effective date;
 - (iv) The life expectancy of the existing enterprise, as based on federal depreciation guidelines; and
 - (v) The existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting the termination of such lease.

This information shall be supported by relevant documentary evidence such as financial statements, copies of lease agreements to premises and any equipment, and tax records. Copies of such documentary evidence must be attached to the application for extension. No investment that was not incurred by the date of passage and approval of this article shall be considered.

Sec. 26-38. - Alcoholic beverages prohibited; exceptions.

No person, association, partnership, limited liability company, or corporation operating or working in an adult establishment shall serve, sell, distribute or suffer the consumption or possession of any intoxicating liquor, beer or wine or controlled substance defined by state law upon the premises of the adult establishment.

Sec. 26-39. - Penalties.

Any person, firm, partnership, or corporation violating the provisions of this article shall be guilty of a violation of this Code, and shall be punished by a fine not to exceed \$1,000.00 per violation or by imprisonment for a period not to exceed 60 days, or by both such fine and imprisonment. In addition to such fine and/or imprisonment, a violation of this article shall also be grounds for suspension or revocation of the license issued hereunder.

Secs. 26-40—26-65. - Reserved.

ARTICLE III - ESCORT SERVICES

DIVISION 1 - GENERALLY

Sec. 26-66. - Intent of article.

It is the intent of this article to regulate the operation of escort and/or dating services operating in the Town consistent with the requirements of the constitution and laws of the state.

Sec. 26-67. - Compliance.

No person shall conduct the business of an escort and/or dating service in the Town without first meeting the requirements of this article.

Sec. 26-68. - Copy of article.

Upon request, the Town clerk or designee shall provide each applicant hereunder with a copy of this article.

Sec. 26-69. - Information concerning employees to be filed with the Mayor; background investigation required.

All licensees under this article must be filed with the Town clerk or designee their home address, home telephone number, and place of employment. Changes thereto shall be filed with the Town clerk or designee within ten days from the date the change becomes effective.

All employees of the licensee must submit to a background investigation not less than 15 days prior to commencing work to allow for the investigation of the employee. The Town clerk or designee shall provide the release form used to conduct the background investigation. After the release has been signed, the Town police department shall investigate the police record of the employee.

Sec. 26-70. - Records of clients.

It shall be the duty of the licensee to maintain correct and accurate records of the name and address of the persons receiving escort and/or dating services and to provide the name of the employee providing such service. Records shall be kept for a minimum of three years. These records shall be subject to inspection at any time by Town clerk or designee and the Town police department.

Failure to maintain records as required in this section is a violation of this article.

Secs. 26-71—26-98. - Reserved.

DIVISION 2 – LICENSE

Sec. 26-99. - Required; application; information to be given.

Any person desiring to engage in the business, trade or profession of providing and/or arranging dates, escorts, or partners for persons shall, before engaging in such business, trade or profession, file an application with the Town clerk or designee and obtain a license. This application shall be typewritten or legibly handwritten and shall contain the following as appendices:

- (1) Name, home and business address of the applicant, date of birth, and sex.
- (2) The applicant and employees must submit to a background investigation. The Town clerk or designee shall provide the release form used to conduct the background investigation. After the release form has been signed and witnessed, the Town police department shall investigate the police record of the employee. The release form must be signed at least 15 days prior to the issuance of a license to allow for the investigation of the applicant, and for the employee, at least 15 days prior to the commencement of work to allow for the investigation of the employee.
- (3) The applicant must furnish a list of at least three character witnesses by name, address, and telephone number.
- (4) Applicants shall furnish the name and address of any person having previously employed the applicant (in whatever position) for the last two years, if applicable

- (5) Applicants shall provide two recent identical photographs to the Town clerk or designee. The photographs must have been taken within the past six months and be a good likeness of the applicant. The photographs must be clear with a full front view of the applicant's face. Photographs may be in color or black and white and the size must be two inches by two inches. The photograph must be taken without head covering unless a signed statement is submitted indicating that the head covering is worn daily for religious or medical reasons. Dark glasses may not be worn in the photographs unless a doctor's statement is submitted supporting the wearing of dark glasses for medical reasons. The Town clerk or designee shall permanently affix one photograph to the permit.

The Town police department shall be notified within ten days of any change of ownership and/or partners or employees.

A corporation, partnership, or other business entity being established for the purpose of engaging in the business, trade or profession of providing and/or arranging dates, escorts, or partners for persons, must also obtain a license.

State law reference— Authority to regulate escort services, O.C.G.A. § 48-13-9.

Sec. 26-100. - Qualifications of applicant.

No occupation tax certificate or license shall be granted pursuant to this article to any person less than 18 years of age or any person who has been convicted, pled guilty or entered a plea of nolo contendere under any federal, state or local law of any crime involving moral turpitude, illegal gambling, any felony, criminal trespass, public indecency, misdemeanor involving any type of sexual related crime, any theft or violence against person or property, any crime of possession, sale, or distribution of illegal drugs, distribution of material depicting nudity or sexual conduct as defined under state law, criminal solicitation to commit any of these listed offenses, attempts to commit any of these listed offenses, for a period of ten years prior to the date of application for such certificate and has been released from parole or probation.

Sec. 26-101. - Fees.

License fees and the background investigation fee shall be as established by the Town Council. No license can be issued by the Town clerk or designee until the applicant satisfies the qualifications listed in this article and pays all license fees.

State law reference- Authority to assess regulatory fees for escort services, O.C.G.A. § 48-13-9.

Sec. 26-102. - Unlawful or prohibited activities.

No person less than 18 years of age shall be employed by an escort and/or dating service in any capacity.

Sec. 26-103. - Notice of denial of license.

The Town clerk or designee shall provide the applicant with written notice of the denial of the escort and/or dating service license. The notice of denial shall include the grounds for denial.

Sec. 26-104. - Suspension or revocation of license.

- (1) No license issued hereunder may be transferred.
- (2) Each license granted hereunder shall be subject to suspension or revocation for violation of any rule or regulation of the Town now in force or hereafter adopted.
- (3) Whenever the Town clerk or designee determines there is cause to suspend or revoke the license issued hereunder, the Town clerk or designee must give the licensee a ten-day written notice of intention to suspend or revoke the license. A hearing will be scheduled wherein the licensee may present a defense to the suspension or revocation before the Town Council or such board as the Town Council may designate. The ten-day written notice must include the time, place, and purpose of such hearing, and a statement of the charges upon which such hearing shall be held. After the hearing, the board may suspend or revoke the license issued hereunder if any of the grounds set forth in this subsection. A license may be suspended or revoked upon one or more of the following grounds:

- (a) The licensee is engaged in the escort and/or dating service under a false or assumed name, or is impersonating another practitioner of a like or different name;
 - (b) The 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 duties;
 - (c) The licensee is guilty of fraudulent, false, misleading, or deceptive advertising or practices;
 - (d) The licensee has been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in O.C.G.A. §§ 16-6-1—16-6-25, or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, for a period of five years immediately prior to the filing of the application. If, after having been granted a license, the licensee is found not to be of good moral character, or pleads guilty or enters a plea of nolo contendere to any of the above offenses, said license shall be subject to suspension and/or revocation;
 - (e) The application contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
 - (f) The licensee fails to pay all fees, taxes or other charges imposed by the provisions of this article;
 - (g) The licensee fails to maintain all of the general qualifications applicable to initial issuance of a license under this article;
 - (h) The licensee refuses to accept a client solely on the basis of race, color, national origin, religious belief, or sex. License holders shall not refuse to accept a client unless the client is obviously intoxicated or dangerous;
 - (i) The establishment is a threat or nuisance to public health, safety or welfare; or
 - (j) Any other violation of this article.
- (4) After the Town clerk or designee makes a recommendation to the Town Council to suspend or revoke a license issued hereunder, the Town Council, or such board as it may designate, will conduct a hearing to hear evidence relevant to the alleged violation.
- (a) At the hearing, the Town clerk or his designee proceeds first and presents all evidence and argument in support of the recommendation to suspend or revoke the license issued hereunder.
 - (b) After the Town clerk or his designee makes his presentation, the licensee or the licensee's legal counsel, will present evidence and argument as to why the license issued hereunder should not be suspended or revoked. The Town Council or its designee will have the right to ask questions at any time.
 - (c) After hearing all of the evidence and arguments of the parties, the Town Council will render a decision. The suspension or revocation of an escort or dating service license is final.

Sec. 26-105. - Proration of license fee.

No license fees established in this article shall be prorated.

Secs. 26-106—26-125. - Reserved.

ARTICLE IV – MESSAGE AND SPA ESTABLISHMENTS

DIVISION 1. –GENERALLY

Sec. 26-126. - Definitions.

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

Massage apparatus means any manual, mechanical, hydraulic, hydrokinetic, electric, or electronic device or instrument or any device or instrument operated by manual, mechanical, hydraulic, hydrokinetic or electric power, which is utilized by a massage therapist for the purpose of administering a massage.

Massage establishment means any business established for profit which employs or contracts with one or more massage therapists or operates or maintains for profit one or more massage apparatus, and which for good or valuable consideration, offers to the public facilities and personnel for the administration of massages. The term "massage establishment" shall not include hospitals or other professional health care establishments separately licensed as such by the state.

Massage or massage therapy means the manipulation and/or treatment of soft tissues of the body including, but not limited to, the use of effleurage, petrissage, pressure, friction, tapotement, kneading, vibration, range of motion stretches, and any other soft tissue manipulation whether manual or by use of massage apparatus, and may include the use of oils, lotions, creams, salt glows, hydrotherapy, heliotherapy, hot packs, and cold packs. This term shall not include diagnosis, the prescribing of drugs or medicines, spinal or other joint manipulations, or any service or procedure for which a license to practice chiropractic, physical therapy, podiatry, or medicine is required by the state.

Massage therapist, practitioner, masseur or masseuse means any person who for good or valuable consideration administers massage or massage therapy.

Spa establishment means any business established for profit that provides personal services such as body wraps, hydromineral wraps, body polish, body wash, baths and hydrotub soak.

Sec. 26-127. - Penalty.

Except as otherwise stated in this article, violations of this article shall be punished as provided in section 1-10.

Sec. 26-128. - Scope of regulations.

- (1) All licenses issued under this article shall constitute a mere privilege to conduct the business so authorized during the term of the certificate or permit only and subject to all terms and conditions imposed by the county and state law.
- (2) Nothing in this article shall be construed to regulate, prevent, or restrict in any manner:
 - (a) Any physician, chiropractor, physical therapist, or similar professional licensed and regulated by or through the state while engaged in the practice of said profession;
 - (b) Any hospital or other professional health care establishment separately licensed as such by the state; or
 - (c) Any other individual or entity expressly exempted from local legislation by the laws of the state.

Secs. 26-129—26-152. - Reserved.

DIVISION 2 – LICENSES AND PERMITS

Sec. 26-153. - License required; application.

In addition to obtaining an occupation tax certificate as referenced in section 54-116, all persons, firms or corporations desiring to engage in the business, trade or profession of a massage establishment shall, before engaging in such trade, business or profession, make application for a license in the form and manner prescribed in this section. The application shall include the information required on all license returns, along with the following additional information:

- (1) No license for a massage establishment shall be granted to any person who is not a citizen of the United States or an alien lawfully admitted for permanent residence.
- (2) A letter certifying as to the good moral character of the applicant, signed by three currently qualified and registered Town voters of good moral character. Individuals signing such letter must provide their name and address.
- (3) The applicant must hold and furnish a certified copy of a diploma or certificate of graduation from a state-certified school and accredited school of massage therapy. The diploma must be representative of the fact that the applicant attended a course of study of not less than 500 credit hours, consisting of a curriculum of anatomy,

physical culture, physiology, basic massage theory, technique and clinical practice, approach to massage, allied modalities and disease awareness and other such subjects.

- (4) The applicant 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.
- (5) If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited associated with the operation of the massage therapy establishment.
- (6) If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in the county.
- (7) If the applicant is a corporation, such corporation must be chartered under the laws of the state or authorized by the secretary of state to do business in the state.
- (8) If the applicant is an individual, the applicant must submit a copy of a valid driver's license or a valid I.D. card as reliable proof thereof. Additionally, if the applicant does not reside in the Town, the applicant must provide the name and address for an agent who resides in the Town authorized to receive legal process and notices under this article on behalf of the applicant.

In addition to obtaining an occupation tax certificate as referenced in section 54-116, all persons, firms or corporations desiring to engage in the business, trade or profession of a spa establishment shall, before engaging in such trade, business or profession, make application for a license in the form and manner prescribed in this article. The application shall include the information required on all license returns, along with the following additional information:

- (1) No license for a spa establishment shall be granted to any person who is not a citizen of the United States or an alien lawfully admitted for permanent residence.
- (2) If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited associated with the operation of the massage therapy establishment.
- (3) If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in the Town.
- (4) If the applicant is a corporation, such corporation must be chartered under the laws of the state or authorized by the secretary of state to do business in the state.
- (5) If the applicant is an individual, the applicant must submit a copy of a valid driver's license or a valid I.D. card as reliable proof thereof. Additionally, if the applicant does not reside within the Town, the applicant must provide the name and address for an agent who resides within the Town authorized to receive legal process and notices under this article on behalf of the applicant.

No person, firm or corporation or its officers shall be granted a license for a massage or spa establishment unless it shall appear to the satisfaction of the Town clerk or designee that such person, partners in the firm, officers and directors of the corporation have not been convicted or plead guilty or entered a plea of nolo contendere under any federal, state or local law of any crime involving illegal gambling, any felony, criminal trespass, public indecency, disorderly conduct, misdemeanor involving any type of sexually related crime, any theft or violence against person or property, any crime of possession, sale, or distribution of illegal drugs, distribution of material depicting nudity or sexual conduct as defined under state law, criminal solicitation to commit any of these listed offenses, attempts to commit any of these listed offenses, for a period of ten years prior to the date of application for such certificate and has been released from parole or probation. No person, partner or officer less than 18 years of age shall be granted a license for a massage or spa establishment.

State law reference— Authority for regulation of massage parlors, O.C.G.A. § 48-13-9.

Sec. 26-154. - Regulatory fee; expiration.

There shall be an annual regulatory fee for each massage and spa establishment licensed within the Town in the amount established by the Town Council. The regulatory fee shall be paid with the license application.

All licenses granted hereunder shall expire on December 31 of each year. Each subsequent application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.

All licenses granted hereunder shall be for the calendar year and the full regulatory fee must be paid for a license application filed prior to July 1 of the license year. One-half of a full regulatory fee shall be paid for a license application filed after July 1 of the license year.

Any person applying hereunder who shall pay the required fee, or any portion thereof, after January 1 shall, in addition to said annual fee and late charges, pay simple interest on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.

State law reference- Authority to assess regulatory fees on massage parlors, O.C.G.A. § 48-13-9.

Sec. 26-155. - Work permits required.

Prior to the issuance of a license, the on-premises owners, managers and employees desiring to engage in the business, trade or profession of massage therapy shall be required to obtain a work permit.

Sec. 26-156. - General operating provisions.

- (1) It shall be the duty of all persons holding a license under this article to file the name of all employees, their home address, home telephone number and place of employment with the Town clerk or his designee. The holder of a license issued under the provisions of this article must additionally report changes in the list of employees with the names and require supplement information for new employees to be filed with the Town clerk or his designee within ten days from the date of such change.
- (2) It shall be the duty of any person granted a license under this article to maintain correct and accurate records of the name and address of the persons receiving treatment at such establishment, the type of treatment administered, and the name of the person at the establishment administering the treatment. The records shall be subject to inspection at any time by the Town clerk or his designee, or the chief of police or his designee.
- (3) The establishment shall have an owner, manager, or supervisor on the premises at all hours the establishment offers massage therapy. If during an inspection there is no owner, manager, or supervisor on the premises, the establishment must cease operations and close to the public until an owner, manager or supervisor is on the premises.
- (4) Records required to be maintained under this article shall be kept for a minimum of two years beyond the expiration date of a license. Records shall be made available to the Town clerk or his designee, during business hours, at the certificate holder's business location within the Town, within ten business days of any such request.
- (5) The establishment shall be subject to inspection at any time during business hours by the Town clerk or his designee and by the chief of police or his designee to ensure compliance with this article.
- (6) All employees, massage therapists 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 article, the term "completely clothed" shall mean having on the upper portion of the body appropriate undergarments and either blouse or shirt which shall cover all the upper body except the arms and neck, and 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 nontransparent.
- (7) No business of a massage therapist shall be engaged in and no place of business shall be open for business except within and between the hours of 7:00 a.m. and 10:00 p.m.
- (8) A readable sign shall be posted at the main entrance identifying the establishment. Signs shall comply with the sign requirements of this Code.

- (9) Minimum lighting shall be provided in accordance with the state building code, and additionally, at least one artificial light of not less than 40 watts shall be provided in each enclosed room or booth.
- (10) Ordinary beds or mattresses shall not be permitted in any establishment.
- (11) The establishment, prior to the issuance of the license must be in compliance with all applicable building and life safety codes, and the building to be occupied must have a valid, current certificate of occupancy.
- (12) It shall be unlawful for any person less than 18 years of age 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. It shall be the duty of the holder of a license to determine the age of the person attempting to patronize a massage establishment and to prohibit such patronage by an underage person.
- (13) No massage practitioner, or any of his employees, shall manipulate, fondle or handle the sexual organs or anus of any person.

Sec. 26-157. - Issuance.

- (1) When a license application is submitted in proper form, including all information and exhibits required herein and accompanied by the correct fees, the application shall be accepted and a review of the application and an inspection and investigation shall be conducted by the Town clerk or his designee. The Town clerk or his designee shall transmit a copy of the completed application to the Town police department. Upon the payment by the applicant of the required fees, the Town police department, or its designee, shall cause to be conducted a background investigation of the police record of the applicant, and shall transmit a summary of the investigation results to the licensing and revenue manager or his designee.
- (2) Upon receipt of the background investigation, and completion of review of the application in accordance with the terms of this article, the Town clerk or his designee shall act on the application. The Town clerk or his designee shall deny any application that:
 - (a) Fails to meet each of the application requirements specified herein.
 - (b) Fails to meet each of the minimum standards specified in this section.
 - (c) Contains false information in the application or attached documents.

Sec. 26-158. - Grounds for revocation and suspension.

The license of a massage or spa establishment may be revoked or suspended upon one or more of the following grounds:

- (1) Failure of the holder to maintain initial requirements for obtaining the license.
- (2) The holder is guilty of fraud in the practice of massage, or fraud or deceit in his being issued the license for the practice of massage.
- (3) The holder is engaged in the practice of massage under a false or assumed name, or is impersonating another therapist of a like or different name.
- (4) The holder has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, disorderly conduct, or entered a plea of nolo contendere to any felony.
- (5) Any of the holder's employees, independent contractors or agents has been convicted, pled guilty, or entered a plea of nolo contendere to any felony, or has violated any laws relating to sodomy, aggravated sodomy, solicitation of sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, or disorderly conduct in connection with the operation of the massage establishment or on or about the premises of the massage establishment.
- (6) Failure of the holder to maintain correct and accurate records as required by this article.

- (7) Failure of the holder to actively supervise and monitor the conduct of the employees, independent contractors, agents, customers, or others on the premises in order to protect the health, safety and welfare of the general public and the customers.
- (8) The holder, his employees, agents, or independent contractors associated with the establishment have allowed to occur or have engaged in a violation of any part of this article.
- (9) The holder has violated any of the provisions of this article.

Sec. 26-159. - Hearings.

No license for a massage or spa establishment shall be denied, suspended or revoked without the opportunity for a hearing as hereinafter provided.

- (1) The Town clerk or his designee shall provide written notice to the applicant or license holder of his order to deny, suspend or revoke the license. Such written notification shall set forth in reasonable detail the reasons for such action and shall notify the applicant or license holder of the right to appeal under the provisions of this chapter.
- (2) Any applicant or license holder who is aggrieved or adversely affected by a final action of the Town clerk may have a review thereof by appeal to the Town Council. Such appeal shall be by written petition filed in the office of the Town clerk or his designee within 15 days after the final order or action of the Town clerk accompanied by a filing fee to defray administrative costs. The amount of the filing fee shall be as determined by the Town Council. The Town clerk or his designee, at his discretion, may waive or reduce the filing fee amount if it is determined the fee would create a hardship on the individual filing such appeal. The Town Council may, at the request of the appellant, refund the filing fee by majority vote.
- (3) A hearing shall be conducted on each appeal within 30 days of the date of filing with the Town clerk or his designee unless a continuance of such date is agreed to by the appellant and the Town clerk or his designee. The appellant at such 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. Should the appellant desire an official transcript of the appeal proceedings, then such request must be made at least three days prior to such hearing. The appellant shall have the burden of proof on any such appeal.
- (4) Before hearing an appeal, each member of the Town Council shall sign an affidavit to be part of the record that he is not related to or personal friends with any appellant or any owner of the establishment in question in the appeal being considered and that he has no financial interest in the outcome of the appeal. Should any member be unable to sign such an affidavit, that member shall not serve on that appeal and the case shall be heard by the remaining members of the Town Council.
- (5) The findings of the Town Council shall be forwarded to the Town clerk or his designee within 15 days after the conclusion of the hearing, and it shall be the duty of the Town clerk or his designee to notify the appellant and the chief of police or his designee of the action of the Town Council.
- (6) The findings of the Town Council shall be final.

Secs. 26-160—26-185. - Reserved.

ARTICLE V. - PAWNSHOPS, PAWNBROKERS, JUNK AND SECONDHAND DEALERS

Junk dealers, O.C.G.A. § 43-22-1 et seq.; used motor vehicle and used motor vehicle parts dealers, O.C.G.A. § 42-47-1 et seq.; dealers in used watches, O.C.G.A. § 43-39-1 et seq.; pawnbrokers, O.C.G.A. § 44-12-130 et seq

Sec. 26-186. - Definitions.

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

Accepted identification means an official document, most commonly in the form of a plastic coated/sealed card, government issued for purposes of identification, or valid driver's license. Such a document must be issued by one of the 50 states or a branch of the U.S. Military, i.e., Army, Navy, Air Force, Marines, Coast Guard, or be a current probation or parole card of the state and its counties. At a minimum, the identification must bear a true photograph of the person presenting it, date of birth, description of the person, and an address for the person. Should the address be other than a residence address, i.e., a post

office box, a residence address must be provided and supported by documentation, including, but not being limited to, a lease, a utility bill, a property tax bill, or a mobile telephone bill.

Bailment means the placing of possession of personal property or title belonging to one person in another person who subsequently holds possession.

Deceptive business practice means:

- (1) Possession or any use of a false weight or measurement, or any other device for falsely determining or recording any quality or quantity in connection with any scale or service;
- (2) Any sale or offer to sell or delivery of less than the represented quality or quantity;
- (3) Any attempt by a buyer or broker to take more than the represented quantity of any commodity, when it is this buyer or broker who furnishes the weight or measure;
- (4) Any service which is of an unreasonably lesser quality than the service offered or represented;
- (5) Any other practice designated as unlawful by O.C.G.A. § 10-1-390 et seq.; and
- (6) Any other fraudulent business transaction which is made punishable by the laws of the state.

Employee means any individual who works in a pawnshop and specifically includes both independent contractors and individuals who may also have any kind of ownership interest in the pawnshop.

Good moral character means a person who has not been convicted of or pled guilty or nolo contendere to any felony or any crime involving theft, drugs, fraud or a crime against property in the past ten years. The ten-year period shall commence from the date of any such conviction.

Minor means any person who has not attained the age of 18 years.

Occupation tax certificate means permission to operate a business evidenced by an occupation tax certificate issued pursuant to chapter 54, article V, pertaining to business occupation tax, licenses and regulation.

Pawn or pledge means a bailment, of personal property or title as security for any debt or engagement, redeemable upon certain terms and with the express or implied power of sale on default.

Pawnbroker means any person engaged in whole or in part in the business of lending money on the security of pledged goods, or in the business of purchasing tangible personal property or title on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time, or within this form of business purchasing tangible personal property or title from persons or sources other than manufacturers or regulated dealers as a part of or in conjunction with the business activities described herein.

Pawnshop means any business involving in any part the pledge, pawn, or exchange of any goods, wares, merchandise, or any kind of personal property or title as security for the repayment of money lent thereon.

Pawnshop permit means permission to operate a pawnshop regulated by the Town police department.

Permit means permission to be employed or work in a pawnshop regulated by the Town police department.

Secondhand dealer means any person or business which is not a pawnbroker, but does, exclusively or as incidental to or in connection with other business, purchases, sells or acquires in trade used or secondhand jewelry, flat silver, gold, and silver objects of every kind and description, including watches and clocks, any of which is made in whole or in part of gold, silver, platinum, or other precious metals; diamonds, emeralds, rubies, or other precious stones; pistols or guns; musical instruments, bicycles or accessories. Any person or business which shall purchase any item of the kinds herein described from any person other than a bona fide dealer in those items shall, for the purpose of making the reports required herein, also be a secondhand dealer and subject to all the provisions of this article relating to those records and reports.

Sec. 26-187. - Penalties for violation.

Except as otherwise stated in this article, violations of this article shall be punished as provided in section 1-10.

Sec. 26-188. - Applicability.

- (1) This article is intended to regulate the conduct and activities of pawnbrokers and pawnshops, as defined hereafter, in order to reduce and curtail the criminal activities frequently engendered by such businesses; to aid the Town police department in detection and prevention of criminal conduct; and to ensure fair dealing between a pawnbroker and customers.
- (2) This article is further intended to regulate specified conduct and activities of secondhand dealers, as defined in section 26-186. The provisions of section 26-191—26-196 are applicable to secondhand dealers.

Sec. 26-189. - Pawnshop employees.

- (1) All persons employed or working in a pawnshop as defined in section 26-186 shall first obtain a permit from the Town allowing the person to be employed or work in a pawnshop. Permit license fees for employees shall be set by resolution of the Town Council, and shall remain in effect from year to year, until modified or amended by subsequent resolution adopted by the Town Council.
- (2) In order for a permit to be issued, the person must meet the following qualifications:
 - (a) Must be 18 years of age or older;
 - (b) Must be of good moral character as defined in section 26-186, to wit: must not have within the past ten years been convicted of, pled guilty or nolo contendere to any felony or any crime involving, theft, drugs, fraud or a crime against property;
 - (c) Must disclose ownership or interest in any other pawnshop, whether located in or out of the state. An interest shall be deemed to exist if the person or a member of his or her family is the outright owner of the pawnshop; a co-owner of the pawnshop; a partner in a partnership which owns all or any part of the pawnshop; or a stockholder in any corporation organized for pecuniary gain which owns all or any part of the pawnshop;
 - (d) Shall be fingerprinted and photographed by the Town police department, and the Town shall have ten days to investigate the information provided.
- (3) Until a permit is issued, the person shall not work in the pawnshop.
- (4) It shall be the duty of the pawnbroker to ensure that the provisions of this section are met.
- (5) Should any information provided pursuant to this section change after original approval has been granted, the employee shall notify the Town police department of such change and in any event provide the correct information prior to any renewal.
- (6) Should a permit be denied, the prospective employee may, within ten days of the denial, apply to the Town police department for a hearing. Any decision from such a hearing may be appealed to the Mayor or his designee, who shall issue such order as appropriate after a hearing.
- (7) Conviction of violating any of the provisions of this article or any other ordinance of the Town, rules or regulations of the Town, or conviction of any felony or any crime involving theft, drugs, fraud or a crime against property within the past ten years shall automatically revoke any permit previously issued.
- (8) So long as the person continues to meet the requirements of this article, the permit shall be renewed on a calendar year basis. The renewal fee for the permit shall be paid at the time the renewal application is filed by January 1 of the year for which the permit is requested. The renewal permit fee shall be set by resolution of the Town Council, and shall remain in effect from year to year, until modified or amended by subsequent resolution adopted by the Town Council.

Sec. 26-190. - Occupation tax certificate and pawnshop permit required.

- (1) It shall be unlawful for any person to engage, conduct or carry on within the Town any pawnshop without a currently valid occupation tax certificate as required by chapter 54, article V, pertaining to business and occupation taxes, and a currently valid pawnshop permit as required by this article.

- (2) In addition to the occupation tax certificate, an application for a pawnshop permit authorizing the operation of a pawnshop regulated by the Town police department shall be submitted along with payment of a nonrefundable application fee as set by resolution of the Town Council and which shall remain in effect from year to year, until modified or amended by subsequent resolution adopted by the Town Council. So long as the requirements of this article are met, the permit shall be renewed on a calendar year basis. The renewal fee shall be paid at the time the renewal application is filed by January 1 of the year for which the permit is requested. The renewal permit fee shall be set by resolution of the Town Council, and shall remain in effect from year to year until modified or amended by subsequent resolution adopted by the Town Council.
- (3) Occupation tax certificate and a pawnshop permit shall be personal to and nontransferable by an applicant, a holder thereof, or by operation of law; provided, however, that if the applicant or holder is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner without effecting a surrender or termination of the occupation tax certificate and pawnshop permit, and, in such case, upon notification to the Town the occupation tax certificate and pawnshop permit shall be placed in the name of the surviving partner.
- (4) The occupation tax certificate number and pawnshop permit number shall be printed on the front window of the regulated premises in uniform letters not less than three inches in height and shall read: "Town of Trion Pawnshop Certificate Number _____ and Town of Trion Pawnshop Permit Number _____."

Sec. 26-191. - Recordkeeping.

- (1) A book shall be kept and shall have entered an accurate description of all property which is acquired by purchase or trade, and the name, address, estimated age, weight, and height of the person from whom purchased or acquired and the date and hour of purchase. These entries shall be made as soon as possible after the transaction, but in no case, more than one hour thereafter.
- (2) Each entry in this book shall be numbered serially, and the property described in the entry shall have attached to it a tag bearing the same serial number.
- (3) This book shall at all times be subject to inspection and examination by the Town police department.
- (4) A daily report shall be made electronically to the chief of police, in such format as may be prescribed by him, of all property purchased or acquired during the 24 hours ending at 12:00 midnight on the date of the report.
- (5) All property purchased or acquired shall, at all times, be subject to examination and inspection by the Town police department. If, upon any inspection, a police officer shall have reasonable cause to believe that any of the property is stolen, he shall segregate it. It shall thereafter be unlawful for the person in possession of the property to dispose of or damage the property in any manner, until 15 days have elapsed from the date of the inspection.
- (6) All property purchased or acquired shall be held for not less than 15 days.
- (7) It shall be unlawful to acquire by purchase, pawn, or trade any watch, clock, pistol, gun, automobile tire or battery, or any other item commonly branded with a serial number, upon which the number has been mutilated or altered.
- (8) It shall be unlawful to buy or receive any property from any person less than 18 years of age, provided that any pawnbroker or secondhand dealer who obtains and retains a copy of accepted identification shall not be subject to this provision.

Sec. 26-192. - Additional requirements applicable to pawnshops and pawnbrokers.

Notwithstanding other provisions of this article or other provisions of ordinances of the Town, the following requirements shall be applicable:

- (1) Pawnbrokers shall comply with all provisions of O.C.G.A. title 44, ch. 12, art. 3, pt. 5 (O.C.G.A. § 44-12-130 et seq.), addressing and regulating pawnbrokers and their business operations in the state.
- (2) A fingerprint of each person pawning, pledging or selling any article shall be obtained. It should be of the right hand index finger, unless this finger is missing, in which event the print of the next finger in existence on the right hand shall be obtained with a notation as to the exact finger printed. In the event the right hand is missing, the fingerprint should be of the left index finger, unless such finger is missing, then the print of the next finger in

existence on the left hand shall be fingerprinted, and notation made of the exact finger. These prints shall be made on forms prescribed by the Town police department and each form shall be completed in full as to each and every transaction regardless of whether the person may have previously pawned an article and thus been previously fingerprinted.

- (a) A photograph of each person pawning, pledging or selling any article or articles shall be taken and retained by the pawnbroker.
- (b) Further, acceptable identification shall be required from any person pawning, pledging, or selling an article, and the number of this identification document, along with any other information required, shall be copied and retained by the pawnbroker.
- (c) The pawnshop broker and any employee shall have the affirmative duty to compare all pictures, physical descriptions and signatures on the identification presented and shall not transact any business with a person who appears to be presenting false or altered identification. If the identification presented is not a state-issued identification, the pawnshop broker and any employee will have the affirmative duty of providing the listed address from the identification as well as a current state address on the transaction paperwork. The pawnbroker is required to check the customer's identification for each transaction.

Sec. 26-193. - Avoidance by Town employees of conflict of interest.

- (1) No employee of the Town or its contracted agents shall have any interest in a pawnshop within the Town.
- (2) No employee of the Town or its contracted agents may own, work in or be employed (paid or unpaid) by a pawnshop.
- (3) The provisions in section 26-192 shall further apply to any employee of the Town who is related to any person by consanguinity.

Sec. 26-194. - Restrictions of sale or pledge of building glass, plumbing materials, and building materials.

It is unlawful for pawnbrokers to purchase, advance money on, or take in pawn glass taken from buildings, such as mantel mirrors, art glass and the like, or copper wire, copper linings of bathtubs, lead pipes or any kind of plumbing materials sold as junk, or other types of unused building materials where the same is offered for sale or pawned by other than persons of known good character.

Sec. 26-195 – Lost or damaged goods.

- (1) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning
- (2) *Lost* means destroyed or having disappeared due to any cause, known or unknown, that results in the pledged goods being unavailable for return to the pledgor.
- (3) Any person presenting a pawn ticket to the pawnbroker along with acceptable identification shall be presumed to the pledgor or seller and shall be entitled to redeem the pledged goods described in the ticket. In the event the described goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with like kinds of merchandise or settle upon a cash price. Proof of replacement shall be a defense to prosecution.

Sec. 26-196. - Failure of pawnshop compliance.

Any pawnshop operated, conducted or maintained contrary to any of the provisions of this article and the provisions of the laws of the state addressing and regulating pawnbrokers and their business operations shall be declared to be unlawful and a public nuisance. The Town may, in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for abatement, removal or injunction thereof, in the manner provided by law and shall take such other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate or remove such pawnshop and restrain and enjoin any person from operating, conducting or maintaining a pawnshop contrary to the provisions of this chapter. In addition, violation of the provisions of this article shall be, per se, grounds for suspension or revocation of an occupation tax certificate.

Secs. 26-197—26-214. - Reserved.

ARTICLE VI. - DOOR-TO-DOOR SALESMEN AND PEDDLERS

Division 1 – Door-to-Door Salesmen

Sec. 26-215. - Definitions.

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

Licensed solicitor means and includes any person who has obtained a valid permit as hereinafter provided, which permit is in the possession of the solicitor on his or her person while engaged in soliciting.

Residence means and includes every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

Soliciting means and includes any one or more of the following activities:

- (1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services of any kind, character or description whatever, for any kind of consideration whatever;
- (2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or publication; or
- (3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.

Sec. 26-216. - Penalties.

Except as otherwise stated in this article, violations of this article shall be punished as provided in section 1-10.

Sec. 26-217. - Permit required.

- (1) It shall be unlawful for any person, firm or corporation to engage in the business of soliciting without first having obtained a permit in accordance with the provisions contained in this article.
- (2) The requirement of subsection (a) of this section is meant to apply to door-to-door solicitations for commercial transactions for profit only.
 - (a) It is not meant to regulate solicitation for charitable, political, or other nonprofit purposes provided that all sales proceeds are the property of and used by the nonprofit organization.
 - (b) It does not apply to officers or employees of the Town, county, state, or federal government, or any subdivision thereof, when on official business.
- (3) Each person shall at all times while soliciting in the Town carry upon his person the permit so issued and the same shall be exhibited by such solicitor whenever he is requested to do so by any police officer or by any person solicited.
- (4) Each permit issued shall contain the name of the solicitor, the name and address of the person, firm or corporation or association whom the solicitor is employed by or represents, a photograph of the solicitor, and physical description. Such photograph shall be provided by the solicitor and shall be at least two inches by two inches in size.
- (5) The permit shall state the expiration date thereof. In no event shall a permit be valid for more than six months.

Sec. 26-218. - Permit applications.

- (1) Application for a permit shall be made upon a form provided by the Town. The Mayor shall have applications available on request. The applicant shall truthfully state in full the information requested on the application, to wit:
 - (a) Name and address of present place of residence and length of residence at such address, also business address if other than present address;

- (b) Address of place of residence during the past three years if other than present address;
 - (c) Age of applicant
 - (d) Physical description of the applicant;
 - (e) Name and address of the person or association whom the applicant is employed by or represents, and the length of time of such employment or representation;
 - (f) Name and address of employer during the past three years if other than the present employee
 - (g) Description sufficient for identification of the subject matter of the soliciting in which the applicant will engage;
 - (h) Period of time for which the certificate is applied;
 - (i) Proposed route, including streets to be included on each day, which applicant intends to follow;
 - (j) The date, or approximate date, of the latest previous application for permit under this chapter, if any;
 - (k) Whether the applicant has ever been convicted of a felony, a crime of moral turpitude, or any other violation of any state or federal law;
 - (l) Names of magazines, books, or journals to be sold;
 - (m) Names of the three most recent communities where the applicant has solicited house to house;
 - (n) Proposed method of operation;
 - (o) Description and license plate number of vehicle intended to be operated by applicant;
 - (p) Signature of applicant.
- (2) All statements made by the applicant upon the application or in connection therewith shall be under oath.
 - (3) The applicant shall submit to fingerprinting by the Town police department in connection with the application for the permit.
 - (4) The Mayor or his designee shall cause to be kept in his office an accurate record of every application received and acted upon together with all other information and data pertaining thereto and all permits issued under the provisions of this article, and of the denial of applications. Applications for permits shall be numbered in consecutive order as filed, and every permit issued shall be identified with the duplicate number of the application upon which it was issued.
 - (5) No permit shall be issued to any person who has been convicted of a felony or crime of moral turpitude within five years of the date of the application, nor to any person who has been convicted of a violation of any of the provisions of this article, nor to any person whose permit issued hereunder has previously been revoked as herein provided.
 - (6) The fee for a permit shall be as determined by the Town Council. The permit shall be for a six-month period for each solicitor.

Sec. 26-219. - Permit revocation.

- (1) Any permit issued hereunder shall be revoked by the Mayor if the holder of the permit is convicted of a violation of any of the provisions of this article or has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a permit under the terms of this article.
- (2) Immediately upon such revocation, written notice thereof shall be given to the holder of the permit in person or by certified United States mail addressed to his or her residence address set forth in the application.

- (3) Immediately upon the giving of such notice, the permit shall become null and void and must be turned in to the Mayor's office.

Sec. 26-220. - Routes.

To the extent practical, each solicitor shall identify the streets and routes that he will follow on each day he is engaged in the business of soliciting. If changes in routes are made, then such changes must be immediately reported to the Mayor's office.

Sec. 26-221. - Prohibitions.

- (1) Any licensed solicitor who shall be guilty of any fraud, cheating, or misrepresentation, whether himself or through an employee, while acting as a solicitor in the Town, shall be deemed guilty of a violation of this article.
- (2) It is hereby declared to be unlawful and shall constitute a nuisance for any person, whether licensed under this article or not, to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined, prior to 8:00 a.m. or after 9:00 p.m.

DIVISION 2 – PEDDLERS

Sec. 26-222 – Definitions.

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

Peddler means any person, whether a resident of the Town or not, traveling by foot, wagon, motor vehicle or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or any person who, without traveling from place to place, shall sell or offer the same for sale from a wagon, motor vehicle, railroad car or other vehicle or conveyance. One who solicits orders and, as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article, shall be deemed a peddler subject to the provisions of this article. The word "peddler" shall include the words "hawker" and "huckster."

Sec. 26-223 – Location.

No peddler shall have any exclusive right to any location in the public streets, nor shall he be permitted a stationary location, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

Sec. 26-224 – Duties of Police Officers.

It shall be the duty of any police officer of the Town to require any person seen peddling, and who is not known by such officer to be duly licensed, to produce his peddler's license and to enforce the provisions of this article against any person found to be violating the same.

Sec. 26-225 – Reports of Violations.

The chief of police shall report to the clerk all convictions for violations of this article, and the clerk shall maintain a record for each license issued and reports of violations therein.

Sec. 26-226 – Required license.

It shall be unlawful for any person to engage in the business of peddler within the corporate limits of the Town, without first obtaining a license therefor as provided in this division.

Sec. 26-227 – Application.

Applicants for a license under this division must file with the clerk a sworn application on a form to be furnished by the clerk which shall give the following information:

- (1) The name and description of the applicant.
- (2) The address (legal and local) of the applicant.
- (3) A brief description of the nature of the business and the goods to be sold.
- (4) If the applicant is employed, the name and address of the employer, together with credentials establishing the exact relationship.
- (5) The length of time for which the right to do business is desired.
- (6) If a vehicle is to be used, a description of the same, together with license number or other means of identification.
- (7) A statement as to whether or not the applicant has been convicted of a felony, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.

Sec. 26-228 – License Fee; exception.

- (1) The amount of the license fee shall be set by the Town Council. No license can be issued by the Mayor or designee until the applicant satisfies the qualifications set forth in this article and pays the license fee.
- (2) no fee shall be required of a person selling products of the farm or orchard actually produced by the seller.

Sec. 26-229 – Transfer.

No license issued under the provisions of this division shall be used at any time by any person other than the one to whom it was issued.

Sec. 26-230 – Exhibition.

Peddlers shall exhibit their licenses at the request of any citizen.

Secs. 26-231- 26-250. Reserved.

ARTICLE VII. - TAXICABS

Charter reference— Authority to regulate taxicabs, § 1.03(b)(39)_ State Law reference— Authority to regulate taxicabs, O.C.G.A. § 48-13-1

Sec. 26-251. - Definitions.

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

Operator means any person, firm, or corporation in the business of transporting passengers in taxicabs.

Tax commissioner means the tax commissioner of the county or such other person who is designated to enforce the provisions of this article.

Taxicab means any passenger-carrying vehicle used in the business of transporting passengers for hire which does not have fixed termini, including but not limited to, any unmarked automobiles used in the business of transporting passengers for hire by contract or requested special services that do not have fixed terminal.

Sec. 26-252. - Penalties.

Except as otherwise stated in this article, violations of this article shall be punished as provided in section 1-10.

Sec. 26-253. - Operations deemed to be doing business in the Town.

A taxicab shall be deemed to be doing business in the Town when its original terminus, that is to say, the place from which it operates and is subject to calls, shall be located in the Town.

Sec. 26-254. - Operation of taxicab to be in compliance with article.

No person, firm, or corporation shall operate a taxicab in the Town except in accordance with the terms and provisions of this article.

Sec. 26-255. - License fees; driver's permit; occupational tax.

License fees for annual operation and driver's permit are hereby to be set by ordinance of the Mayor and Town Council. State law reference- Authority to impose regulatory fees on taxicab businesses, O.C.G.A. § 48-13-9.

Sec. 26-256. - Permits for operation.

Required. No person, firm, or corporation shall operate a taxicab or conduct the business of operating taxicabs in the Town until the person, firm, or corporation has first applied for and obtained an occupation tax certificate and permit to do so. The applications for the occupation tax certificate and license shall be made to the business tax division of the county tax commissioner's office upon forms provided by the business tax division for that purpose. The license for vehicles shall be issued by the business tax division. Permits for drivers will be issued by the police department.

Description of business. The application shall contain, among other things, a detailed description of the equipment to be used in the business and the name of the operators thereof, the point of original terminus of the business, and the address and telephone number of the office or call station from which the business is operated.

Indemnity insurance. No permit to operate taxicabs shall be issued or continued in operation unless the holder thereof shall file with the business tax division a policy of indemnity insurance in some indemnity insurance company authorized to do business in this state, which policy shall have limits equal to or in excess of the following sums for each taxicab operated:

- (1) For bodily injury to each person, \$50,000.00;
- (2) For bodily injury to all persons sustained in any one accident, \$50,000.00; and
- (3) For property damage and liability for baggage of passengers, \$25,000.00.
- (4) The policy shall be conditioned to protect the public against injury or damage proximately caused by the negligence of the holder of such permit. Each driver shall be listed on the policy at the time of application. Additional drivers or new drivers hired after issuance of the occupation tax certificate shall be covered by a rider to the policy prior to the issuance of a driver's permit.

Sec. 26-257. - Certificate of inspection; posting in cab.

A certificate of inspection issued by a licensed garage shall be posted in the taxicab at all times certifying that the taxicab and equipment therein are safe and in compliance with applicable law. This certificate must be renewed every 90 days, and the operator of any taxicab business shall be required to keep his taxicab and equipment therein in safe condition conforming to all laws under penalty of having his permit to conduct a taxicab business suspended or revoked.

Sec. 26-258. - Additional equipment.

The operator of a taxi business shall register with the business tax division of the office of tax commissioner of the county each additional piece of equipment put in use, and same shall be subject to inspection and registration as herein provided.

Sec. 26-259. - Drivers; qualifications.

It shall be the duty of all operators to file with the business tax division the names and addresses, age and physical description of the persons employed as drivers. All drivers shall hold licenses from the state department of public safety as drivers of vehicles for hire, and driver's permits issued by the police department. No person shall be employed or shall drive a taxicab who has, within the past five years, been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in O.C.G.A title 16, ch. 6 (O.C.G.A. § 16-6-1 et seq.), or to the offense of driving under the influence of drugs and/or alcohol, or to any open container violations, or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, violence, or the violation of a spirituous, vinous, or malt beverage

statute. No driver can be issued a permit if the driver has received three or more moving violations in the preceding 12-month period.

Sec. 26-260. - Taxi stands; parking.

Operators and drivers of taxicabs shall not park taxicabs in any congested area as defined by the regulations of the county commissioners at any place other than the place or places designated as taxi stand. The parking of taxicabs shall be subject at all times to the direction of police officers should such direction be necessary or desirable for the relief of an emergency traffic condition.

Sec. 26-261. - Posting of ID of driver and number of taxicab.

The operator is responsible for ensuring that each taxicab used in active business shall have posted in a conspicuous place, on the inside thereof, the name and photograph of the driver of the taxicab. Each taxicab used in active business shall also bear on the outside thereof a numbered decal to be furnished by the business tax division of the office of the county tax commissioner.

Sec. 26-262. - Operators responsible for violations by drivers.

To the extent provided by law, operators are responsible for violations of this article by their taxicab drivers whether such drivers are direct employees or independent contractors.

Sec. 26-263. - Notice of denial of license.

In the event that an application is denied, the tax commissioner shall provide the applicant with written notice of the denial of the taxicab license. The notice of denial shall include the grounds for denial.

Sec. 26-264. - Suspension or revocation of license.

- (1) No license issued hereunder may be transferred.
- (2) Each license granted hereunder shall be subject to suspension or revocation for violation of any rule or regulation of the county now in force or hereafter adopted.
- (3) Whenever the tax commissioner determines there is cause to suspend or revoke the license issued hereunder, the tax commissioner shall give the licensee ten-day written notice of intention to suspend or revoke the license. A hearing will be scheduled wherein the licensee may present a defense to the suspension or revocation before the board of commissioners or such board as the board of commissioners may designate. The ten-day written notice shall include the time, place, and purpose of such hearing, and a statement of the charges upon which such hearing will be held. After the hearing, the board may suspend or revoke the license issued hereunder if any of the grounds set forth below exist. A license issued under this article may be suspended or revoked by the board of commissioners or their designee and a driver's permit may be suspended or revoked by the county police department upon one or more of the following grounds:
 - (a) The application contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
 - (b) For failure to pay all fees, taxes or other charges imposed by the provisions of this article;
 - (c) For failure to maintain all of the general qualifications applicable to the initial issuance of a license or permit under this article;
 - (d) Having four or more moving traffic violations in any 12-month period;
 - (e) Refusing to accept a client solely on the basis of race, color, national origin, religious belief, or sex.
 - (f) Operators and drivers shall not refuse to accept a client unless the client is obviously intoxicated or dangerous;

- (g) Allowing the required insurance coverage to lapse or allowing a driver to operate in the Town in violation of the provisions of this article;
 - (h) The establishment or driver is a threat or nuisance to public health, safety or welfare; or
 - (i) For violation of any part of this article.
- (4) After the Mayor makes a recommendation to the Town Council to suspend or revoke a license issued hereunder, the Town Council, or such board as the Town Council may designate, will conduct a hearing to hear evidence relevant to the alleged violation.
- (a) At the hearing, the Mayor or his designate proceeds first and presents all evidence and argument in support of the recommendation to suspend or revoke the license issued hereunder.
 - (b) The Mayor and the Town councilmembers or their designees will have the right to ask questions at any time.
 - (c) After the Mayor makes his presentation, the licensee or the licensee's legal counsel will present evidence and argument as to why the license issued hereunder should not be suspended or revoked. The Mayor and Town councilmembers or their designees will have the right to ask questions at any time.
 - (d) After hearing all of the evidence and arguments of the parties, the Mayor and Town Council will render a decision. The suspension or revocation of a license is final unless the licensee files a petition for writ of certiorari to the Superior Court of Chattooga County within 30 days of the date of the decision.

Sec. 26-265. - No proration of license fee.

No license fees shall be prorated.

Secs. 26-266- 26-290 – Reserved.