

STATE OF GEORGIA

COUNTY OF CLAYTON

ORDINANCE NO. 2019-51

AN ORDINANCE TO AMEND THE CODE OF CLAYTON COUNTY, GEORGIA, AS AMENDED, SPECIFICALLY, CODE OF CLAYTON COUNTY, GEORGIA, PART II, CHAPTER 2 “ADMINISTRATION”, ARTICLE III “BOARDS, COMMISSIONS AND AUTHORITIES” BY ADDING A NEW DIVISION VI “LICENSE REVIEW BOARD”, AND CODE SECTIONS THEREUNDER; TO REPEAL CONFLICTING LAWS, ORDINANCES AND RESOLUTIONS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE OF THIS ORDINANCE; AND FOR OTHER PURPOSES.

NOW THEREFORE, BE IT ORDAINED BY THE CLAYTON COUNTY BOARD OF COMMISSIONERS AND IT IS HEREBY ORDAINED

**Section 1.** The Code of Clayton County, Georgia, as amended, is hereby further amended by amending Part II, Chapter 2 “Administration”, Article III “Boards, Commissions and Authorities” by adding a new Division VI “License Review Board,” and code sections thereunder numbered as Section 2-90, et seq., to read as follows:

*Chapter 2 – ADMINISTRATION*

*Article III. BOARDS, COMMISSIONS AND AUTHORITIES*

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*DIVISION 6. – LICENSE REVIEW BOARD*

*Sec. 2-90 – License Review Board*

*Sec. 2-90.1 - Creation of board.*

*The Clayton County License Review Board (LRB) is created with the intent that it be empowered to suspend or revoke any license issued by the County through its various departments for due cause as further described in section 2-90.4. The LRB shall be an administrative board with authority to hold hearings, impose*

*administrative fines and other noncriminal penalties to include suspension or revocation of any license issued by the various departments of county government.*

*Sec. 2-90.2. - Definitions.*

*As used in this division, the term:*

*“Board of commissioners” means the Board of Commissioners of Clayton County.*

*“County Code” means the body of ordinances and appendixes enacted by the Board of Commissioners.*

*“County attorney” means the staff attorney or legal counselor for Clayton County.*

*“LRB” means the Clayton County License Review Board.*

*Sec. 2-90.3. - Membership of board; requirements of members; chairperson and vice chairperson; attorney's role.*

*(a) The board of commissioners shall appoint the license review board, consisting of five members. The board of commissioners may appoint up to two alternate members for the LRB to serve on the board in the absence of board members.*

*(b) Members of the LRB shall be residents of the county eligible to vote in county elections.*

*(c) (1) The initial appointments to the five-member LRB shall be as follows:*

*a. Two members appointed for a term of two years; and*

*b. Three members appointed for a term of four years each.*

*(2) Upon the expiration of the initial terms specified, all terms shall be for four years.*

*(3) A member may be reappointed upon approval of the board of commissioners.*

*(4) An appointment to fill any vacancy on the LRB shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chairperson, the LRB shall declare the member's office vacant, and the board of commissioners shall promptly fill such vacancy.*

*(5) The members shall serve in accordance with ordinances of Clayton County and may be suspended and removed for cause as provided in such ordinances for removal of members of boards. The board of commissioners may, with or without cause, refuse to reappoint any member of the LRB at the expiration of his or her term of office.*

*(d) The members of the LRB shall elect a chairperson and a vice chairperson, who shall be voting members, from among the members of the board. The presence of three (3) or more members shall constitute a quorum of the LRB. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the board of commissioners or as otherwise provided by law.*

*(e) An attorney authorized by the board of commissioners shall be counsel to the LRB. The county attorney, or designee, shall represent the county by presenting cases before the LRB.*

*Sec. 2-90.4. - Initiating of proceedings; cause for suspension or revocation.*

*(a) The chief of police or the director of the department of community development may initiate enforcement proceedings of the LRB by written complaint to the LRB chairperson with a copy to the county attorney. No member of a board shall have the power to initiate such enforcement proceedings.*

*(b) Within thirty days of receipt of a complaint, the chairperson will set a date for a hearing and notify the members, the licensee, the county attorney and*

*complainant of the date, time and location of the hearing. Notice of the hearing may be mailed by first class mail to the business address of the licensee or to the address of the agent for service of process or both. In addition, a Notice of hearing may be posted at the business location. Sufficient notice shall be deemed to have been given if the Notice of Hearing is both mailed to the licensee or the agent for service of process, and posted at the business location. Notice of an hearing to consider the suspension or revocation of a permit or employee permit issued to a person shall be given by first class mail to the last known address of such person in the records of the Department of Community Development*

*(c) The LRB may suspend a license for not more than twelve months or revoke a license when:*

*(1) The licensee is found to have engaged in any unlawful activity, including any act which would constitute a violation of a federal, state or county law, ordinance or resolution, and where such unlawful activity is such as to directly or indirectly affect the licensee's ability or qualification to conduct the business for which the license was issued; or*

*(2) The licensee is found to have been convicted of three or more violations of federal, state or county law or ordinance within twelve months. For the purpose of this subsection, a conviction shall include a plea of nolo contendere, a plea of guilty, or a finding a guilty after trial, of the licensee or any employee of the licensee for a violation that occurred on the licensee's property or in the course of the normal business of the licensee; or*

*(3) The licensee is found to have failed to pay any licensee fees, taxes, or other fees due the County, after notice and thirty days to make payment in full; or*

*(4) The licensee is found to have failed to take reasonable precautions for the safety of patrons, employees and the public in the operation of the licensed premises, location or business operation. Where the license includes sales or dispensing of alcoholic beverages, or where the license allows for parties, celebrations or provides a venue for such activities, it shall be a rebuttable presumption of a violation of this sub-section for a person to be harmed or be put into jeopardy of harm by violence that occurs on or adjacent to the venue; or*

*(5) The licensee is found to be operating a personal care home, group home or any similar facility that provides housing or care for more than two unrelated persons and there is evidence that the licensee has not provided adequate medical care, sustenance, safety, or has failed to exercise due diligence by maintaining photographs and complete descriptions of the persons in care to aid police in locating them should they wander off or fail to abide by court ordered or stipulated curfew; or*

*(6) The licensee is found to be creating a public nuisance by operating a business that generates more than twenty calls for police response within a six-month period. For the purpose of this subsection, the LRB shall only consider calls for police service created by the operation of the licensee's business; or*

*(7) The licensee is found to have failed to maintain the property in compliance with county ordinance, and after notice and thirty days to bring the property into compliance has failed to do so; or*

*(8) The licensee fails to commence doing business as forth in the application within six months from the date the license was issued; or*

(9) *The licensee fails to obtain or to maintain any other license, permit or occupational registration required by law or regulation, or where such license, permit or occupational registration has been suspended or revoked*

(d) *This provision shall also apply to persons who have been issued permits or employee permits.*

*Sec. 2-90.5. - Calling of hearings; hearing proceedings.*

(a) *Upon receipt of a complaint from the chief of police or director of community development, or at such other times as may be necessary, the chairperson of the LRB may call a hearing of the LRB. Minutes shall be kept of all hearings by the LRB, and all hearings and proceedings shall be open to the public. The board of commissioners may provide or assign clerical and administrative personnel to assist the LRB in the proper performance of its duties.*

(b) *Each case before the LRB shall be presented by the county attorney or designee.*

(c) *The LRB shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.*

(d) *At the conclusion of the hearing, the LRB shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted in this division. The findings and conclusions shall be by motion approved by a majority of those members present and voting, but at least two members of the LRB must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by said date.*

*Sec. 2-90.6. - Powers of the LRB.*

*(a) The LRB shall have the power to:*

*(1) Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure that each side has an equal opportunity to present evidence and argument in support of its case;*

*(2) Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the county code;*

*(3) Subpoena evidence to its hearings in the same way as provided in paragraph (2) of this section, with the approval of the court with jurisdiction over a criminal violator of the county code;*

*(4) Take testimony under oath; and*

*(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.*

*Sec. 2-90.7. - Administrative fines; public record.*

*(a) In addition to the power to suspend or revoke a business license, the LRB, may impose a fine of up to \$1,000.00 for a violation of any of the provisions of Sec. 2-90.4(c) of this division.*

*(b) In determining the amount of the fine, if any, the LRB shall consider the following factors:*

*(1) The gravity of the violation;*

*(2) Any actions taken by the violator to correct the violation; and*

*(3) Any previous violations committed by the violator.*

*(c) The LRB may reduce a fine imposed pursuant to this section.*

*Sec. 2-90.8.- Stipulated agreements*

*(a) Prior to final judgement of a complaint by the LRB, the licensee and the county may enter into a stipulated agreement to resolve the complaint. The agreement may include*

*a temporary suspension of license, an administrative fine, a surrendering of the license, or any combination of these agreed to by the parties.*

*(b) Upon adoption by the LRB, the stipulated agreement will become the judgement and order of the LRB.*

*Sec. 2-90.9. - Appeals to superior court.*

*An aggrieved party, including the board of commissioners, may appeal a final administrative order of the LRB to the superior court. An appeal shall be filed within 30 days of the date of the order to be appealed.*

**Section 2.** The Code of Clayton County, Georgia, as amended, is hereby further amended by amending Part II, Chapter 6 “Alcoholic Beverages”, Article II “Enforcement” by amending section 6-33 “Suspension and revocation,” to read as follows:

*Sec. 6-33. - Suspension and revocation.*

*(a) Any license which has been issued or which may hereafter be issued pursuant to this chapter may be suspended or revoked by the license review board for cause as set out in section 2-90.4 of this code.*

*(b) It is unlawful and a violation of this section for any person, business or other entity to sale or otherwise dispense alcoholic beverages after a license has been suspended or revoked. Each unlawful sale or dispensing of an alcoholic beverage shall be a separate violation and upon conviction shall be punished as provided for in section 1-12 of this code.*

**Section 3.** The Code of Clayton County, Georgia, as amended, is hereby further amended by amending Part II, Chapter 22 “Businesses”, Article II “Occupational Licenses,” Division I, “Generally” by amending section 22-34 “Revocation,” to read as follows:



*Sec. 22-34 – Suspension and revocation*

*(a) Any license or permit which has been issued or which may hereafter be issued pursuant to this chapter may be suspended or revoked by the license review board for cause as set out in section 2-90.4 of this code.*

*(b) It is unlawful and a violation of this section to operate a business after the license has been suspended or revoked. It is a rebuttable presumption of a violation of this section for a business to be occupied by anyone other than the owner or manager after the license is suspended or revoked. Each day the business is open or otherwise operated in violation of this section shall be a separate violation and upon conviction shall be punished as provided for in section 1-12 of this code. The owner or manager may apply for a permit from the director to occupy the business with sufficient persons to bring it into compliance with the code or for similar purposes other than engaging in business. At all times the business is occupied, all entrances must be posted as “CLOSED FOR BUSINESS” and the general public must be denied entrance.*

**Section 4.** The Code of Clayton County, Georgia, as amended, is hereby further amended by amending Part II, Chapter 22 “Businesses”, Article IV “Massage Therapists and Massage Establishments,” Division II, “License” by amending section 22-140 “Refusal to grant or restore licenses; discipline of licensees; suspension, revocation, or restriction of licenses,” to read as follows:

*Sec. 22-140. - Refusal to grant or restore licenses; discipline of licensees; suspension, revocation, or restriction of licenses.*

*(a) The department shall have authority to refuse to grant a license to an applicant or to discipline a licensee under this article upon a finding by the department that the licensee or applicant has:*

*(1) Displayed an inability or has become unable to work as a massage therapist or as an operator of a massage establishment, as the case may be, with*

*reasonable skill and safety to clientele by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of substance, or as a result of any mental or physical condition. In enforcing this subsection, the department may, upon reasonable grounds, require the licensee or applicant to submit to a mental or physical examination by an appropriate practitioner of the healing arts. The expense of such examination shall be borne by such licensee or applicant. The results of such examination shall be admissible in any hearing before the department, the board of commissioners, or a court of competent jurisdiction, in the event of an appeal. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the department, unless such failure was due to circumstances beyond the licensee's or applicant's control, the department may enter a final order upon proper notice, hearing, and proof of such refusal;*

*(2) Been convicted in the last ten years of any offenses involving the use of or threat of force or violence upon the person of another; any offenses involving narcotics, dangerous drugs, or dangerous weapons; any felony involving moral turpitude; any offenses involving sexual behavior, whether felony or misdemeanor, as set out in O.C.G.A. Title 16, Crimes and Offenses, Chapter 6, Sexual Offenses. For the purpose of this subsection, a conviction shall include a finding or verdict of guilty, plea of guilty, or a plea of nolo contendere in a criminal proceeding regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon pursuant to provisions of O.C.G.A. §§ 42-8-60 through 42-8-64, relating to first offenders, or any comparable rule or statute;*

*(3) Knowingly made misleading, deceptive, untrue, or fraudulent representations to a client, customer, or other person or entity in connection with the provisions of massage services or any document connected therewith; or practiced*

*fraud or deceit or intentionally made any false statement in obtaining or attempting to obtain a license provided for in this article;*

*(4) Performed massage services contrary to this article; or knowingly aided, assisted, procured, or advised any person to perform massage services contrary to this article; or knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person to perform massage services;*

*(5) Engaged in any unprofessional, unethical, deceptive, deleterious practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person; unprofessional conduct shall also include any departure from or failure to conform to the acceptable and prevailing minimal standards applicable to massage therapists or operators of massage establishments; or*

*(6) Failed to report to the department any act or omission of a licensee or applicant or any other person who violates the provisions of this article.*

*(7) In regard to a license to operate a massage establishment, had more than one occurrence within the past ten years of any of the license holder's employees, independent contractors, or agents having violated or been convicted of offenses involving the use of or threat of force or violence upon the person of another, any offenses involving narcotics, dangerous drugs, or dangerous weapons, any felony involving moral turpitude or any offenses involving sexual behavior, whether felony or misdemeanor, as set out in O.C.G.A., Title 16, Crimes and Offenses, Chapter 6, Sexual Offenses, which arose from acts or behavior on the premises of a massage establishment. For the purpose of this subsection, a conviction shall include a finding or verdict of guilty, plea of guilty, or a plea of nolo contendere in a criminal proceeding regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon pursuant to provisions of O.C.G.A. §§ 42-8-60 through 42-8-64, relating to first offenders, or any comparable rule or statute.*

*(b) When the department finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this section, the department may take such action as more fully set forth in section 22-34.*

*(c) For purposes of this section, a licensee or applicant, whether the same is a person, partnership, firm, corporation or other entity, who may or may not perform massage services, and all persons having a beneficial interest in the operation of a massage establishment (except stockholders owning less than five percent of the stock in a corporation) shall be subject to the provisions of this section and be treated as if they were the licensee or applicant.*

*(d) Where the department refused to grant a license to an applicant or the county has revoked a license under this article, the effected licensee or applicant shall be disqualified from reapplying for such license for 12 months immediately following such action taken by the department.*

**Section 5.** The Code of Clayton County, Georgia, as amended, is hereby further amended by amending Part II, Chapter 22 “Businesses”, Article VI “Sexually Oriented Businesses,” by amending section 22-418 “Suspension, revocation and probation of license,” to read as follows:

*Sec. 22-418. - Suspension, revocation of license or permit.*

*Any license or employee permit issued under this article shall be subject to suspension or revocation for cause as set out in section 22-34.*

**Section 6.** The Code of Clayton County, Georgia, as amended, is hereby further amended by amending Part II, Chapter 22 “Businesses”, Article VII “Taxicabs and Taxicab Drivers,” Division I, “Generally” by amending section 22-471 “Revocation and restoration,” to read as follows:

*Sec. 22-471. – Additional grounds for revocation.*

*(a) Additional Grounds. In addition to the grounds set out in section 2-90.4, the License Review Board may in its discretion, revoke or suspend any taxicab driver's permit granted under the provisions of this article whenever any Clayton County Police Department officer, Clayton County Sheriff's Deputy, or Inspector of Clayton County Community Development has provided to the director or chief of police a sworn affidavit, based on the affiant's personal knowledge, that the holder of the permit has violated any of the provisions of this article.*

*(b) Notice. Notice of the hearing of the License Review Board where the driver's permit will be considered, may be given by sending such notice by first class mail to the last known address of the driver according to the records of the department.*

**Section 7.** The Code of Clayton County, Georgia, as amended, is hereby further amended by amending Part II, Chapter 22 “Businesses”, Article XI “Fortunetelling, Phrenology, Astrology, Clairvoyance, Palmistry or Similar Practices,” Division I, “Generally” by amending section 22-808 “Revocation and restoration,” to read as follows:

*Sec. 22-808. – Additional grounds for revocation.*

*(a) Additional Grounds. In addition to the grounds set out in section 2-90.4, the License Review Board may in its discretion, revoke or suspend any fortunetelling permit granted under the provisions of this article whenever any Clayton County Police Department officer, Clayton County Sheriff's Deputy, or Inspector of Clayton County Community Development has provided to the director or chief of police a sworn affidavit, based on the affiant's personal knowledge, that the holder of the permit has violated any of the provisions of this article.*

*(b) Notice. Notice of the hearing of the License Review Board where the driver's permit will be considered, may be given by sending such notice by first class mail to the last known address of the driver according to the records of the department.*

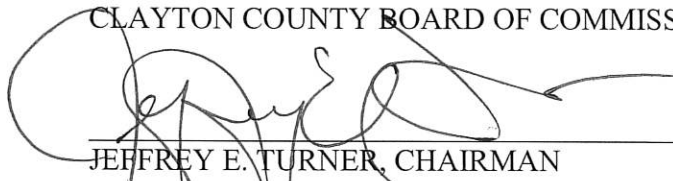
**Section 8.** All laws, ordinances and resolutions, or parts thereof, which conflict with the provisions of this Ordinance are hereby repealed.

**Section 9.** If any part of this Ordinance shall be declared unconstitutional by the valid judgment of any court of competent jurisdiction, such unconstitutionality shall not affect the remainder of this enactment, and such remainder shall remain in full force and effect.

**Section 10.** This Ordinance shall become effective upon its approval by the Board of Commissioners.

SO ORDAINED, this 7 day of May, 2019.

CLAYTON COUNTY BOARD OF COMMISSIONERS

  
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JEFFREY E. TURNER, CHAIRMAN

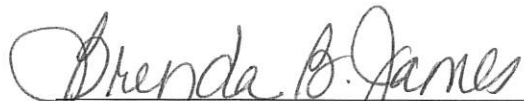
  
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FELICIA FRANKLIN WARNER, VICE CHAIR

  
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SONNA GREGORY, COMMISSIONER

  
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GAIL HAMBRICK, COMMISSIONER

  
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DEMONT DAVIS, COMMISSIONER

ATTEST:

  
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BRENDA B. JAMES, CLERK