ORDINANCE 2011-09-15

STATE OF GEORGIA
COUNTY OF FULTON

AN ORDINANCE TO AMEND ARTICLE IV, CHAPTER 26 OF THE CODE OF ORDINANCES OF SANDY SPRINGS (MASSAGE AND SPA ESTABLISHMENTS) BY REVISING CERTAIN SECTION NUMBERS AND REFERENCES.

WHEREAS, the City of Sandy Springs (the "City") previously enacted an ordinance on massage establishments and spas (the "Ordinance"), on July 12, 2011 (Ordinance 2011-07-08); and

WHEREAS, certain references made the provisions of this ordinance to different sections of this ordinance referenced an improperly-numbered section; and

WHEREAS, in order to clarify the Massage and Spa Establishments Ordinance and provide for orderly and clear enforcement of Chapter 26, Article IV of the City of Sandy Springs Code, the City Council desires to readopt the Massage and Spa Establishment Ordinance with the referenced sections appropriately numbered.

NOW, THEREFORE, the Mayor and City Council of the City of Sandy Springs hereby Ordain that Article IV, Chapter 26 of the Code of the City of Sandy Springs is hereby revised to read as follows:

Chapter 26

ARTICLE IV. - MASSAGE AND SPA ESTABLISHMENTS

*State law reference—Georgia Massage Therapy Practice Act, O.C.G.A. § 43-24A-1 et seq.; local regulation of massage, O.C.G.A. § 43-24A-22.

Sec. 26-126. - Purpose.

In order to protect the health, safety and general welfare of the citizens of the city, it is the purpose of this article to regulate the operation of massage and spa establishments and to regulate the practice of massage therapy by massage therapists that have not been licensed by the state, who restrict their practice to the manipulation of the soft tissue of the hands, feet, or ears of the human body, who do not have clients disrobe, and who do not hold themselves out as a massage therapist whose practice is licensed by the State.

Sec. 26-127. - 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:

"Applicant" means any person, firm, corporation, or other legal entity applying for a license to operate a massage establishment or spa establishment, as defined herein, or a person applying for a work permit, as provided herein.

"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, a system of structured touch, pressure, movement, and holding to the soft tissue of the body, and any other soft tissue manipulation whether manual or by use of massage apparatus, and may include the use of water, oils, lotions, creams, lubricants, salt glows or scrubs, hydrotherapy, heliotherapy, hot packs, cold packs or other topical preparations. 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 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 or commercial establishment:

(a) (1) Having a source of income or compensation derived from the practice of massage which employs or contracts with one or more massage therapists or operates or maintains for profit one or more massage apparatus; or

(2) Which, for good or valuable consideration, offers to the public facilities and personnel for the administration of massages; and

(b) Which has fixed a place of business where any person, firm, association, or corporation engages in or carries on any of the activities defined as "massage."

The term massage establishment shall not include hospitals or other professional health care establishments separately licensed as such by the state.

"Massage therapist" means any person who, for any consideration whatsoever, engages in the practice of massage as defined in this section.

"Spa establishment" means any business or commercial establishment operated to derive income from the provision of any of the following personal services: body wraps, hydro mineral wraps, body polish, body wash, baths and hydro tub soak, or other similar personal services purported to assist patrons with improving their physical condition or appearance and which require the patron to disrobe. This term shall not include hospitals or other professional health care establishments separately licensed as such by the state.

Sec. 26-128. - Penalty.

Any person violating any of the provisions of this article shall be punished as provided in section 1-10.

Sec. 26-129. - Scope of regulations.

(a) All licenses issued under this article shall constitute a mere privilege to conduct the business so authorized during the term of the license or work permit only and shall be subject to all terms and conditions imposed by the city and state law.

(b) Nothing in this article shall be construed to regulate, prevent or restrict in any manner:

(1) Any physician, chiropractor, physical therapist, massage therapist that is not operating a massage or spa establishment, or similar professional licensed and regulated by or through the state, while engaged in the practice of said profession;

(2) Any hospital or other professional health care establishment separately licensed as such by the state; or

(3) Any other individual or entity expressly exempted from local legislation by the laws of the state.

Sec. 26-130. - License required; application.

(a) In addition to obtaining an occupation tax certificate pursuant to chapter 54, article V, all persons, firms or corporations operating or desiring to operate a massage or spa establishment shall, before engaging in such trade, business or profession, make application to the city for a license in the form and manner prescribed in this article. Applications for licenses shall be made on forms provided by the city. If the applicant is a partnership, limited liability company, corporation, or other legal entity, the application must be executed by an officer, member, partner or shareholder, as applicable, and, if not the same person as the applicant, the employee or agent primarily responsible for the operation of the massage or spa establishment. The applicant for a license to operate a massage or spa establishment must be the owner of the premises wherein the business will be conducted or the holder of a lease thereon for the period to be

covered by the license. All applications shall contain a full and complete sworn and notarized statement by each applicant, and other required signatories, of all material facts as determined by the city manager to be relevant to the requirements of this article, along with the following:

(1) A signed and sworn affidavit verifying the applicant's lawful presence in the United States as required by O.C.G.A. § 50-36-1.

(2) Copies of all required state licenses with regard to each employee, independent contractor, agent and partner, general or limited, associated with the operation of the massage therapy establishment. Those employees who will be performing massages, and/or managers or supervisors, who are exempt from getting a state license pursuant to O.C.G.A. tit. 43, ch. 24A, shall comply with the work permits provision of this article, section 26-132 below.

(3) If the applicant is not a sole proprietor, then the partnership, limited liability company, corporation, or other legal entity shall submit a complete list of the legal entity's:

a. Officers;

b. Directors;

c. Partners, members, or shareholders (natural persons) holding a ten percent or greater ownership interest in such legal entity, or if there is no shareholder (natural person) with at least a ten percent interest, the ten shareholders with the greatest ownership interest;

d. The name of the employee or agent primarily responsible for operation of the massage or spa establishment; and

e. The names of all on-premises managers or supervisors for the massage or spa establishment. Such list shall include the names, current addresses, phone numbers and occupations of the aforementioned natural persons.

(4) If the applicant is a partnership, limited liability company, corporation or other legal entity required to be chartered under the laws of the state or to be authorized by the secretary of state to do business in the state, such legal entity must be chartered under the laws of the state or authorized by the secretary of state to do business in the state and must submit copies of the certificate of organization or incorporation, as applicable, and articles of organization or incorporation, as applicable.

(5) If the applicant is an individual, the applicant must submit a copy of a valid driver's license or a valid identification card as reliable proof thereof. If the applicant is a partnership, limited liability company, corporation or other legal entity, the applicant must submit a copy of a valid driver's license or a valid identification card for each person listed in subsection (a)(3) of this section.

(6) A sworn and notarized statement of a registered agent who is a resident of Fulton County, Georgia and at least 18 years of age, designated by a licensee to receive any process, notice or demand required or permitted by law or under this article to be served upon the applicant.

(b) A license issued to an individual shall be in the name of the individual. A license issued to a partnership shall be issued in the name of the partnership, in the name of a partner or officer, and, if other than the named partner or officer, in the name of the employee or agent primarily responsible for the operation of the licensed premises. A license issued to a limited liability company shall be issued in the name of the limited liability company, in the name of one member or officer, and, if other than the named member or officer, in the name of the employee or agent primarily responsible for the operation of the licensed premises. A license issued to a corporation shall be issued in the name of the corporation, in the name of at least one shareholder (listed pursuant to subsection (a)(3) of this section) or officer of the corporation, and, if other than the named shareholder or officer, in the name of the employee or agent primarily responsible for the operation of the licensed premises.

(c) No person, partnership, limited liability company, corporation, or other legal entity shall be granted a license for a massage or spa establishment unless it shall appear that such person, or, if the applicant is a partnership, limited liability company, corporation, or other legal entity, all persons listed in subsection (a)(3) of this section, for a period of ten years prior to the date of application for such license have not been convicted or pleaded guilty or entered a plea of nolo contendere under any federal, state or local law of any crime involving:

(1) Illegal gambling;

(2) Any felony, criminal trespass, public indecency, disorderly conduct, or misdemeanor involving any type of sexual-related crime;

(3) Any theft or violence against person or property;

(4) Any crime of possession, sale or distribution of illegal drugs;

(5) Distribution of material depicting nudity or sexual conduct as defined under state law; or

(6) Criminal solicitation to commit any of these listed offenses.

(d) No person under the age of 18 shall be granted a license for a massage or spa establishment. If the applicant is a partnership, limited liability company, corporation, or other legal entity, the partnership, limited liability company, corporation or other legal entity shall not be granted a license for a massage or spa establishment if any of the persons listed in subsection (a)(3) of this section are under the age of 18.

Sec. 26-131. - Regulatory fee; expiration.

(a) There shall be an annual regulatory fee, consisting of a nonrefundable investigative fee and a license fee, for each massage and spa establishment licensed within the city. The nonrefundable investigative fee and the license fee shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council. The nonrefundable investigative fee and the licensee fee shall be paid with the license application and shall not be prorated under any circumstances. If the applicant withdraws the application or the license is denied, the applicant shall be refunded the license fee paid. No refund shall be allowed once the license has been issued.

(b) All licenses granted hereunder shall be for the calendar year and 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. Existing licensees shall file applications by December 1 of each year for the following license year. Applications received after December 1 shall be subject to a ten percent late fee.

(c) 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.

(d) No license issued pursuant to this article shall be transferable.

Sec. 26-132. - Work permits required.

(a) A work permit shall be required for any and all:

(1) On-premises owners, managers or supervisors who are in charge of managing the massage or spa establishment as required by subsection (c) below and who do not otherwise hold a license issued hereunder; and

(2) Massage therapists not possessing a state-issued massage therapist's license who desire to engage in the business, trade or profession of massage therapy or manage a massage and/or spa establishment. A work permit does not authorize an individual to perform any activity requiring state licensure.

(b) Massage therapists who hold a current and valid massage therapist license issued by the State of Georgia do not have to obtain a work permit, but shall provide a copy of their state license to the city and post their state license in a conspicuous place in the licensed establishment at all times while the license remains valid.

(c) No licensee shall allow any person to work at the premises if such person is required to have a state mandated license or work permit pursuant to this section until such person has procured such license or permit. For new employees, a receipt for submitted license or permit application with the City issued by the city manager or designee may be used for a maximum of 30 days from the date of its issue. Licensees and all managers and/or supervisors of any massage or spa establishment are required by this article to inspect and verify that each employee, required to have a valid state license or city work permit,

has in his/her possession the required license or permit at all times, and failure to do so shall be a violation of this article.

(d) Any person required to obtain a work permit shall apply to the city manager or designee for such permit. A separate work permit per individual is required for employment at each establishment within the city. The permit will be valid for a period of one year from the date on which the application is received by the city and shall be renewed on or before its expiration. Persons applying for the permit shall make themselves available for photographing and such other investigation as may be required by the city. The nonrefundable fee for a work permit shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council. Replacement permit(s) shall be issued upon payment of one-half of the fee(s) charged for work permits.

(e) The city manager or designee may suspend or revoke a work permit, following notice and hearing pursuant to this article, and demand its return where the permit holder violates the provisions of this article, any state law or applicable local ordinance.

(f) It shall be unlawful for any person whose work permit has been suspended or revoked to refuse to return the work permit to the city manager or designee or to alter, conceal, deface, or destroy the work permit.

(g) An applicant for a work permit shall not have been convicted within the five years preceding his/her application of any federal, state or local law involving crimes set forth in section 26-130(c) of this article. A guilty plea, plea of nolo contendere or the forfeiture of a bond shall be considered a conviction for purposes of this subsection. Sentencing as first offender status shall not be considered as a conviction if the sentence was successfully completed without any violation of probation and with no adjudication of guilt ever being entered.

(h) A new search may be conducted on any person issued a work permit if the city manager or designee receives information which provides a basis for a new search. If the new search reveals evidence that would require the revocation of the work permit, the work permit may be revoked following notice and a hearing.

(i) When the city manager intends to deny or revoke any work permit, the city manager or designee shall issue to the applicant or permit holder a letter setting forth the reasons for denial or revocation, and the letter shall notify the applicant of his or her right to an administrative hearing before the city manager or designee, which hearing shall be held in accordance with the provisions of section 26-136.

Sec. 26-133. - General operating provisions.

(a) It shall be the duty of all massage and spa establishments granted a license under this article to keep on file the name of all persons working at the massage or spa establishment, their home addresses and home telephone numbers, their duties and services performed for the massage or spa establishment and whether such employee has a state license or city work permit. The holder of a license issued under the provisions of this article must additionally report changes in the list of persons working at the massage or spa establishment with the names and required supplemental information for new employees to be filed with the city manager or designee within ten days from the date of such change.

(b) It shall be the duty of all massage and spa establishments granted a license under this article to maintain correct and accurate records of the names and addresses of the persons receiving treatment or services at such establishment, the type of treatment or services administered and the name of the person at the establishment administering the treatment or services. The records shall be subject to inspection at any time by the city manager or designee, or the chief of police or designee.

(c) The massage or spa 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. Such owner, manager or supervisor, in addition to the licensee, shall be responsible to make sure all persons performing massage therapy at any time has either

an appropriate state license or city work permit and their failure to do so shall be a violation of this article.

(d) 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 city manager or designee, during business hours, at the licensee's business location in the city, within ten business days of any such request.

(e) The massage or spa establishment shall be subject to inspection at any time during business hours by the city manager or designee and by the chief of police or designee, to ensure compliance with this article.

(f) All employees and other persons on the premises, with the exception of customers receiving a massage from a state licensed massage therapist, shall be completely clothed at all times when administering a massage. For the purposes of this article, the term "completely clothed" means having on the upper portion of the body appropriate undergarments and either blouse or shirt which shall cover all the upper body save the arms and neck, and shall mean having on the lower body appropriate undergarments plus either pants or a skirt, and said pants or skirt must cover from the waist down to a point at least two inches above the knee. All clothes worn in compliance with this article shall be entirely non-transparent.

(g) No massage or spa establishment shall be engaged in business or be open for business except within and between the hours of 7:00 a.m. and 10:00 p.m.

(h) A readable sign shall be posted at the main entrance a massage or spa establishment identifying the establishment. Signs shall comply with the sign requirements of the city's Code of ordinances.

(i) Minimum lighting shall be provided in accordance with the City's building code and at least one artificial light of not less than 40 watts shall be provided in each enclosed room or booth.

(j) Ordinary beds or mattresses shall not be permitted in any massage or spa establishment.

(k) A massage or spa establishment, prior to the issuance of a license hereunder, 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.

(l) It shall be unlawful for any person under the age of 18 to patronize any massage or spa establishment for the purpose of a massage or massage therapy unless such person carries at the time of such patronage a written order by a regularly-licensed physician directing the treatment or written permission of the underage person's parent or guardian. It shall be the duty of the massage or spa establishment to determine the age of the person attempting to patronize a massage or spa establishment for the purpose of a massage or massage therapy and to prohibit such patronage by an underage person.

(m) No massage therapist or any of his or her employees shall manipulate, fondle or handle the sexual organs or anus of any person.

Sec. 26-134. - Issuance of license; denial.

(a) When a license application for the operation of a massage or spa establishment 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 city manager or designee. Upon the payment by the applicant of the required fees, the city shall cause to be conducted a criminal background investigation of the applicant and shall transmit a summary of the investigation results to the city manager or designee.

(b)Upon receipt of the background investigation and completion of review of the application in accordance with the terms of this article, the city manager or designee shall either issue the license or deny the application within 60 days of receiving the completed application. The city manager or his designee shall deny any application that:

(1) Fails to meet each of the application requirements specified in this article;

(2) Fails to meet each of the minimum standards specified in this section; or

(3) Contains false, misleading or incomplete information in the application or attached

documents.

(c) Service of any notice for denial, suspension or revocation of a massage or spa establishment license under this article shall be delivered by hand or posted by certified and first class mail to the applicant's address as provided on the application. Delivery shall be deemed to take place on the third day following deposit in the United States mail.

(d) Should the city manager or designee deny an application under this article, written notice of the denial shall be provided to the applicant by the city manager or designee setting forth the reason(s) for the denial, and advising the applicant of the right to appeal.

(e) Any decision by the city manager or designee denying, suspending or revoking an application shall be final unless the applicant files a notice of appeal with the city manager or designee within 30 days of receiving notice of such denial. Any such appeal shall be subject to de novo review and shall be in accordance with section 26-136.

Sec. 26-135. - Grounds for denial, revocation or suspension of license.

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

(1)The applicant or holder has failed to meet or maintain initial requirements for obtaining the license;

(2) The applicant or holder is guilty of fraud in the practice of massage, or fraud or deceit in being issued the license for the massage or spa establishment;

(3) The applicant or holder is engaged in the operation of a massage or spa establishment under a false or assumed name, or is impersonating another massage therapist of a like or different name;

(4) The applicant or holder has violated any laws relating to sodomy, aggravated sodomy, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire or disorderly conduct, criminal solicitation of any of the foregoing offenses, or entered a plea of nolo contendere to any felony;

(5) Any of the applicant's or 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, public indecency, prostitution, pimping, pandering, pandering by compulsion, masturbation for hire, criminal solicitation of any of the foregoing offenses, or disorderly conduct in connection with the operation of the massage establishment or on or about the premises of the massage establishment;

(6) The applicant or holder has failed to maintain correct and accurate records as required by this article;

(7) The applicant or holder has failed 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 applicant or holder, or 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; or

(9) The applicant or holder has violated any of the provisions of this article.

Sec. 26-136. - Hearings.

(a) Whenever the city manager or designee determines there is cause to deny, suspend or revoke a license or work permit issued hereunder, the city manager or designee shall give the licensee written notice at least 15 days prior to an administrative hearing of the time, place, purpose of the hearing, and a statement or the charge(s) upon which the administrative hearing before the city manager or designee shall be held in accordance with this section.

(b)The procedure for administrative hearings heard by the city manager under this article shall be set forth by the city manager. The city manager or designee shall reach a decision on the matter before him or her within ten days following the close of the hearing and shall give written notice of said decision

to the licensee . The decision of the city manager or designee shall be final unless the licensee or permit holder files a notice of appeal to the city manager or designee within 30 days of receiving notice of said decision.

(c)The city council or a designated hearing officer shall hear appeals to decisions by the city manager or designee to deny applications for permits, as well as appeals to decisions by the city manager or designee to suspend or revoke such permits.

(d)Any such appeal to the city council or designated hearing officer shall be subject to de novo review and shall be in accordance with subsections (d), (e) and (f) hereof. A hearing before the city council or the designated hearing officer shall be scheduled within 60 days following the receipt by the city manager or designee of the applicant, licensee or work permit holder's notice of appeal.

(e)Applicants, licensees or work permit holders shall be given no less than twenty (20) days written notice of the date, time, and place when the matter at issue will be heard by the city council or the designated hearing officer. The applicant, licensee or work permit holder shall be afforded the opportunity to be heard and present evidence.

(f)The procedure for hearings of the city council or hearing officer under this article shall conform to the administrative hearings procedure as passed by resolution of the city council. Upon close of the public hearing, the city council or hearing officer shall reach a decision on the matter before it, and the decision of the city council or hearing officer shall be final unless the applicant or permit holder applies to the county superior court by filing a petition for writ of certiorari within 30 days of the decision rendered by the city council or hearing officer.

APPROVED AND ADOPTED this the 20th day of September, 2011.

Approved:

Eva Galambos, Mayor

Attest:

Michael Casey, City Clerk

(Seal)