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STATE OF GEORGIA

CITY OF DORAVILLE

ORDINANCE NO. 2011-___

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF DORAVILLE, GEORGIA AS AMENDED TO ADOPT A NEW SECTION, CHAPTER 6 BUSINESSES AND BUSINESS REGULATIONS, ARTICLE XIV COMMERCIAL SOFT TISSUE TOUCH OR MANIPULATION (CSTTOM), CHAPTER 6 BUSINESSES AND BUSINESS REGULATIONS, SECTIONS 6-810 THROUGH 6-811; TO PROVIDE PENALITIES; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR THE ADOPTION OF A PREAMBLE; TO PROVIDE FOR AN ADOPTION AND EFFECTIVE DATE; TO PROVIDE FOR CODIFICATION; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, the State of Georgia allows local regulation of massage parlors pursuant to O.C.G.A. § 48-13-9(b)(17);

WHEREAS, the State of Georgia has preempted the regulation and licensure of massage therapists pursuant to O.C.G.A. § 43-24A-1, et seq.;

WHEREAS, state law O.C.G.A. § 43-24A-22 allows local regulation of commercial activities that involve touch, contact or manipulation of the human body in ways that do not otherwise meet the state law definition of massage therapy;

WHEREAS, evidence has been presented to the Mayor and Council of the City of Doraville of pernicious secondary effects of wholly unregulated or weakly regulated commercial human contact, touch or manipulation businesses;

WHEREAS, the City staff regularly advises Council and attempts to follow and recommend change to ordinance in light of changing laws and conditions; and;

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WHEREAS, the health, safety, welfare and aesthetics of the citizens of the City of Doraville shall be improved and protected by adoption and implementation of this Ordinance.

THE MAYOR AND COUNCIL OF THE CITY OF DORAVILLE, GEORGIA HEREBY ORDAIN:

Section 1.

That the Code of Ordinances, City of Doraville, Georgia is hereby amended by adding a section to be numbered Commercial Soft Tissue Touch or Manipulation (CSTTOM), Chapter 6 Business and Business Regulations, Sections 6-810 through 6-811, which said sections read as follows:

"Chapter 6. Businesses and Business Regulations.

. . .

Commercial Soft Tissue Touch or Manipulation (CSTTOM)

Sec. 6-810. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section.

Commercial soft tissue touch or manipulation ("CSTTOM") - means, for consideration:

(a) A person who restricts his or her practice to the manipulation of the soft tissue of the human body to head, hands, feet, or ears who does not have the client disrobe and does not hold himself or herself out as a massage therapist.

(b) A person who uses touch, words and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged within the scope of practice of a profession with established standards and ethics, provided that his or her services are not designated or implied to be massage or massage therapy.

(c) A person who uses touch and movement education to effect change in the structure of the body while engaged in the practice of structural integration, provided that he or she is a member of, or whose training would qualify for membership in, the International Association of Structural Integrators and

provided that his or her services are not designated or implied to be massage or massage therapy; or

(d) A person who uses touch to affect the energy systems, polarity, acupoints or Qi meridians, also known as channels of energy, of the human body while engaged within the scope of practice of a profession with established standards and ethics, provided that his or her services are not designated or implied to be massage or massage therapy.

CSTTOM agent – see Permittee.

CSTTOM parlor – means any physical structure where commercial soft tissue touch or manipulation occurs. This term shall be interchangeable with CSTTOM establishment.

Licensee – means the person to whom a license has been issued to own or operate a CSTTOM parlor or performs outcall CSTTOM services.

Massage parlor – means any establishment having a source of income or compensation derived from the practice of massage therapy and which has a fixed place of business where any person engages in or carries on any of the activities involved in massage therapy.

Massage therapist – means a person who administers massage or massage therapy for compensation pursuant to O.C.G.A. § 43-24A-3(7).

Massage therapy – means the application of a system of structured touch, pressure, movement and holding to the soft tissue of the body in which the primary intent is to enhance or restore health and well-being. The term includes complementary methods, including without limitation, the external application of water, superficial heat, superficial cold, lubricants, salt scrubs, or other topical preparations and the use of commercially available electromechanical devices which do not require the use of transcutaneous electrodes and which mimic or enhance the actions possible by hands; the term also includes determining whether massage therapy is appropriate or contraindicated, or whether referral to another health care provider is appropriate. Massage therapy shall not include the use of ultrasound, fluidotherapy, laser, and other methods of deep thermal modalities pursuant to O.C.G.A. § 43-24A-3(8) nor CSTTOM as set out in this article or O.C.G.A. § 43-24A-19(5), (6), (7) or (8).

Outcall CSTTOM service – means any business, the function of which is to engage in or carry on CSTTOM at a location designated by the customer or client rather than at a CSTTOM parlor.

Patron – means any person over eighteen (18) years of age, or anyone under eighteen (18) years of age accompanied by a parent or legal guardian, who receives a soft tissue manipulation or touch under such circumstances that is reasonably expected that he will pay money or give any other consideration therefor.

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Permittee – means the person to whom a permit has been issued to act in the capacity of a CSTTOM agent.

Sec. 6-811. Population cap.

(a) After _____, 2011, there shall be no more than _____ (___)CSTTOM parlors per 10,000 persons living within the City limits based on the most current U.S. Census.

(b) The City Council recognizes that upon the adoption and effective date of this section, there appear to be active CSTTOM type parlors with physical facilities in existence in the City limits. Without waiving any illegality of such physically existing structures based on zoning or other laws and without de facto or specifically granting any "grandfathered," "vested," or "legal non-conforming" (as those terms are defined in state zoning law) status by virtue of adoption of this purely regulatory section, it is the intention of the City Council to allow the continued operation of the existing CSTTOM parlors provided the same apply for and are granted conditional use permits and otherwise comply with all other applicable laws and regulations of the City and state.

(c) Any legally operating CSTTOM parlors as defined above in existence prior to _____, 2011 shall be exempt from the population cap regulation of Section 6-811 until such CSTTOM parlor is no longer in the CSTTOM business.

. . ."

<u>Section 2.</u>

a. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this

Ordinance is mutually dependent upon any other section paragraph, sentence, clause or phrase of this Ordinance.

c. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 3.

Penalties provided for violations of this Ordinance are set out in Section 1-12, as amended, of the Code of Ordinances, City of Doraville, Georgia and are hereby incorporated as if set out fully.

Section 4.

All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

Section 5.

The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 6.

The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City of Doraville.

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Section 7.

It is in the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the code Ordinances, City of Doraville, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

Section 8.

This Ordinance shall become effective upon its adoption by the Mayor and Council.

SO ORDAINED, this _____ day of _____, 2011.

CITY OF DORAVILLE

_____
Mayor

_____
First Reading

_____
Second Reading

ATTEST:

_____ (SEAL)
Melissa McCain, City Clerk

APPROVED AS TO FORM:

_____
Murray J. Weed, City Attorney

	Yea	Nay
Maria Alexander	☐	☐
Brian Bates	☐	☐
Pam Fleming	☐	☐
Karen Pachuta	☐	☐
Donna Pittman	☐	☐

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Bob Roche ☐ ☐