

MEMORANDUM

To: Mayor & City Council

From: Steve Foote, AICP

Date: June 22, 2015

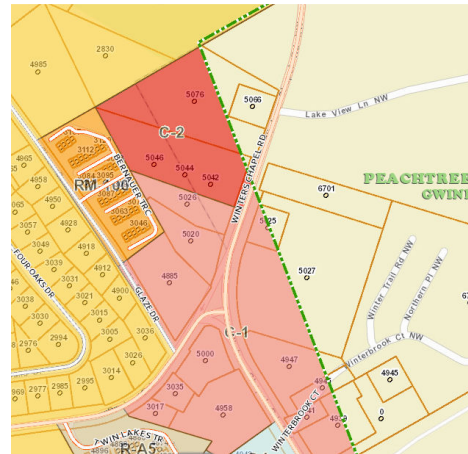
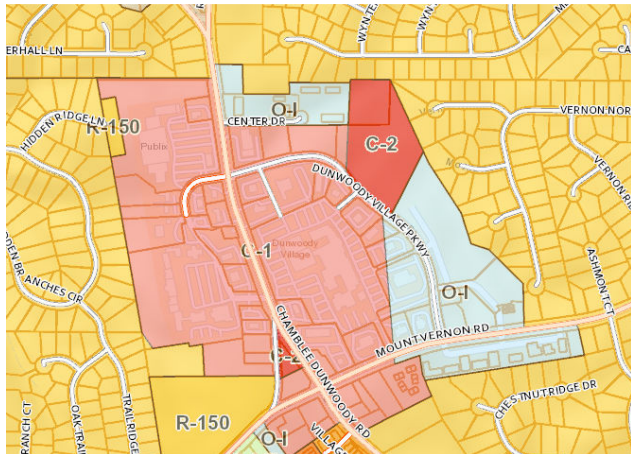
Subject: Text Amendment: Change the classification of massage activities from Adult Service Facilities to Personal Improvement Services

BACKGROUND

The City of Dunwoody Zoning Ordinance currently considers massage activities as Adult Service Facilities and they are restricted to the C-2 and M zoning districts. As an ancillary use massage may be offered as part of a medical office. They are not permitted in any other zoning districts.

The only M district in Dunwoody is part of the I-285 right-of-way. There are four small C-2 zoned areas in Dunwoody, including two parcels in the Dunwoody Village Overlay District and two along Winters Chapel. There are approximately 18 businesses offering some type of massage use within the City of Dunwoody, including the Atlanta School of Massage. Most of these businesses are considered non-conforming.

Areas zoned C-2 are shown below.



The current discussion on massage activities was precipitated by a Business License sweep by Code Enforcement Staff and a separate request received by a new business trying to open a Day Spa (with massage) in Perimeter Mall. Neither site is zoned to allow massage.

ANALYSIS

Section 27-114(1) "Adult Use" of the Zoning Ordinance which contains the restrictions on massage uses is the result of original wording from DeKalb County and changes adopted in the 2013 re-write. Research by staff has not produced any reported complaints regarding the operation of massage or spa businesses in town.

Massage and Spa Establishments are regulated under the same Business and Occupation License regulations in Chapter 10 of the City Code. Although they are similar in many ways, Day Spas (which often include massages) and massage activities are treated differently in

10047 cont.

the Zoning Ordinance. Day Spas are listed under the use category of "Personal Improvement Services" (below):

- (14) *Personal improvement service. Informational, instructional, personal improvement and similar services of a nonprofessional nature. Typical uses include hair salons, barber shops, beauty shops, nail salons, day spas, esthetician services, yoga or dance studios, personal fitness training studios, driving schools and martial arts schools. Health clubs are classified under the "participant sports and recreation" use subcategory.*

Staff believes that amending the Zoning Ordinance is warranted to recognize legitimate massage businesses and to meet the needs of Dunwoody residents. The proposed changes will not impact or alter the Business and Occupation regulations in Chapter 10, Article IX, Massage Establishments and Spas. This Chapter also limits the hours during which a Massage and Spa Establishment can operate from 7:00 a.m. to 10:00 p.m.

Along with this change staff is also proposing to eliminate the category of Adult Service Facility which has no relevant purpose under our Zoning Ordinance. In addition, the wording "and other 'typical' uses per 27-114(14)" is being inserted to recognize that all of the 'typical' uses stated therein are permitted in the same districts.

Proposed Amendment

Sec. 27-72. Uses allowed.

The following table identifies uses allowed in nonresidential and mixed-use zoning districts. See [subsection] [27-111\(4\)](#) for information about how to interpret the use table.

USES	DISTRICTS										Supplemental Regulations
	O-I	O-I-T	O-D	OCR	NS	C-1	CR-1	C-2	M		
<i>P = use permitted as of right / A = special administrative permit req'd / E = special exception req'd / S = special land use permit req'd</i>											
COMMERCIAL											
Adult Use											
Body art service								P	P		
Sexually oriented business	P	-	-	P	-	-	-	P	P	27-149	
Personal Improvement Service											
Barber shop, beauty shop, nail salon, massage and/or spa establishments, estheticians, and other 'typical' uses per 27-114(14)	P	-	-	P	P	P	P	P	P		27-114(14)
Other personal improvement service	-	-	-	-	-	P	P	P	P		
Repair or Laundry Service, Consumer											

Sec. 27-114. Commercial use category.

The commercial use category includes uses that provide a business service or involve the selling, leasing or renting of merchandise to the general public. The commercial use category includes the following use subcategories.

10047 cont.

(1) *Adult use.*

a. *Body art service.* Provision of any of the following procedures: body piercing, tattooing, cosmetic tattooing, branding or scarification. This definition does not include practices that are considered medical procedures by the Georgia Composite Medical Board, which may not be performed in a body art services establishment.

b. *Sexually oriented business.* An adult bookstore or adult video store, an adult cabaret, an adult motion picture theatre, a semi-nude model studio or a sexual device shop. See subsection [27-149\(c\)](#) for additional definitions.

(14) *Personal improvement service.* Informational, instructional, personal improvement and similar services of a nonprofessional nature. Typical uses include hair salons, barber shops, beauty shops, nail salons, massage and/or spa establishments, esthetician services, yoga or dance studios, personal fitness training studios, driving schools and martial arts schools. Health clubs are classified under the "participant sports and recreation" use subcategory.

a. For additional license and operational regulations applicable to Massage and Spa Establishments see Article IX. Massage Establishments and Spas.

Review and Approval Criteria

Chapter 27, Section 27-335 specifically identifies the following criteria to be applied by the department of planning, the Planning Commission, and the City Council in evaluating and deciding any application for a zoning ordinance text amendment.

(c) *Zoning ordinance text amendments.* The following review and approval criteria must be used in reviewing and taking action on all zoning ordinance text amendments:

(1) Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan; and

The proposed text amendment is in conformity with the policy and intent of the Comprehensive Plan, whereby all character areas zoned commercially (except those zoned OIT and OD) would permit massage and spa establishments with the proposed change.

(2) Whether the proposed zoning ordinance text amendment corrects an error or inconsistency in the zoning ordinance, meets the challenge of a changing condition or is necessary to implement established policy.

The proposed text amendment re-addresses the appropriate districts and uses akin to massage therapy. The changes are required to change the policy that

10047 cont.

classifies massage establishments as “adult uses” to “personal improvement services.”

RECOMMENDATION FROM COMMUNITY COUNCIL

The Community Council heard the request amend the regulations related to massage uses during their April 9, 2015 meeting and following brief discussion recommended approval of the request (4 – 0) as presented by staff.

RECOMMENDATION FROM PLANNING COMMISSION

The Planning Commission heard the request to amend the regulations related to massage uses during their May 12, 2015 meeting and following brief discussion recommended approval of the request (4 – 1) as presented by staff.

CITY COUNCIL 1ST READING

During the last meeting the City Council asked staff to research other cities to determine how they regulate massage uses in their Zoning Ordinance. A summary is provided below.

The City of Woodstock considers massage in a category similar to Dunwoody’s Personal Improvement Service classification, provided that the massage professional associated with the spa or like establishment is licensed by the State. Spa/massage uses are allowed by right in Woodstock in the General Commercial (GC), Neighborhood Commercial (NC), Downtown Central Business District (DT-CBD), Downtown Commercial Mixed-Use (DT-CMU), Downtown General Commercial (DT-GC) and Downtown Residential Office (DT-RO) Districts.

The City of Johns Creek allows massage with the “Health club/spa” use, which is permitted by right in the Office-Institutional (O-I), Local Commercial (C-1) and Mixed Use (MXD) Districts. Johns Creek prohibits massage or spa establishments from being within 300 feet of “any parcel occupied by a church, public or private elementary or secondary school, public park, state-licensed day care facility, or any residence,” or within 300 feet of GA Highway 141, through licensing requirements, with exemptions being granted for establishments that meet certain evaluation criteria.

Doraville allows massage, conditionally, in Office-Institutional (O-I), General Business (C-2) and Heavy Industrial (M-2); and Chamblee allows it by right in Industrial (I) districts.

STAFF RECOMMENDATION

Staff recommends City Council approve the proposed amendment as forwarded by the Planning Commission.

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2015-XX-XX

AN ORDINANCE OF THE CITY OF DUNWOODY REVISING CERTAIN PROVISIONS OF ZONING ORDINANCE (CHAPTER 27 OF THE CITY CODE) RECATEGORIZING THE USE CATEGORY FOR MASSAGE ESTABLISHMENTS AND SPAS; AND FOR OTHER PURPOSES

WHEREAS, the City of Dunwoody is charged with providing for the health, safety and welfare of the citizens of the City; and

WHEREAS, the City of Dunwoody Zoning Code currently categorizes Massage Establishments as "Adult Use" while categorizing Spa Establishments as a "Personal Improvement" service; and

WHEREAS, the City's regulatory mechanism for massage parlors in Article IX of Chapter 10 of the City Code treats Massage and Spa Establishments as a similar way, applying the same regulations to both; and

WHEREAS, as a result of the City's current categorization of Massage Establishments, the majority of the City's Massage Establishments are located in a non-conforming zone; and

WHEREAS, in order to provide consistency of regulation and allow for the proper operation of legitimate massage establishments in the City, the Mayor and City Council desire to revise said Zoning Regulations; and

WHEREAS, the Mayor and City Council have conducted a properly-advertised Public Hearing prior to adoption of this Ordinance.

THEREFORE, THE MAYOR AND COUNCIL FOR THE CITY OF DUNWOODY HEREBY ORDAIN AS FOLLOWS:

Section 1: Chapter 27 (Zoning) of the City of Dunwoody Code is hereby revised by amending Article II (Zoning Districts), Sections 27-72 (Uses Allowed) to read as follows:

Sec. 27-72. Uses allowed.

The following table identifies uses allowed in nonresidential and mixed-use zoning districts. See [subsection] 27-111(4) for information about how to interpret the use table.

USES	DISTRICTS									Supplemental Regulations
	O-I	O-I-T	O-D	OCR	NS	C-1	CR-1	C-2	M	
<i>P = use permitted as of right / A = special administrative permit req'd / E = special</i>										

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2015-XX-XX

<i>exception req'd / S = special land use permit req'd</i>										
COMMERCIAL										
Adult Use										
Adult service facility	-	-	-	-	-	-	-	P	P	
Body art service								P	P	
Sexually oriented business	P	-	-	P	-	-	-	P	P	27-149
Personal Improvement Service										
Barber shop, beauty shop, nail salon, <u>massage and/or day spa establishments, estheticians, and other 'typical' uses per 27-114(14)</u>	P	-	-	P	P	P	P	P	P	<u>27-114(14)</u>
Other personal improvement service	-	-	-	-	-	P	P	P	P	
Repair or Laundry Service, Consumer										

Section 2: Chapter 27 (Zoning) of the City of Dunwoody Code is hereby further revised by amending Article III (Uses and Use Specific Regulations), Section 27-114 (Commercial Use Category) to read as follows:

Sec. 27-114. Commercial use category.

The commercial use category includes uses that provide a business service or involve the selling, leasing or renting of merchandise to the general public. The commercial use category includes the following use subcategories.

(1) *Adult use.*

~~a. *Adult service facility.* A commercial establishment in which patrons are directly or indirectly charged a fee to engage in private, personal contact with employees, other patrons or personnel, primarily for entertainment purposes. Adult service facilities include massage establishments and steam rooms but do not include sexually oriented businesses. Massage therapy provided as an ancillary activity to a medical service, use is not considered an adult service facility.~~

ab. *Body art service.* Provision of any of the following procedures: body piercing, tattooing, cosmetic tattooing,

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2015-XX-XX

branding or scarification. This definition does not include practices that are considered medical procedures by the Georgia Composite Medical Board, which may not be performed in a body art services establishment.

be. Sexually oriented business. An adult bookstore or adult video store, an adult cabaret, an adult motion picture theatre, a semi-nude model studio or a sexual device shop. See subsection 27-149(c) for additional definitions.

.....
.....

(14) *Personal improvement service.* Informational, instructional, personal improvement and similar services of a nonprofessional nature. Typical uses include hair salons, barber shops, beauty shops, nail salons, massage and/or day spas establishments, esthetician services, yoga or dance studios, personal fitness training studios, driving schools and martial arts schools. Health clubs are classified under the "participant sports and recreation" use subcategory.

a. For additional license and operational regulations applicable to Massage and Spa Establishments see Chapter 10, Article IX of this Code, Massage Establishments and Spas.

Section 2: This Amendment shall become effective upon approval by the Mayor and City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this ____ day of _____, 2015.

Approved:

Michael G. Davis, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk

Office of City Attorney