

Work Session Meeting of the Sandy Springs City Council was held on Tuesday, February 2, 2016, at 7:28 p.m., Mayor Rusty Paul presiding.

Councilmembers present: Council Member John Paulson, Council Member Ken Dishman, Council Member Graham McDonald, Council Member Gabriel Sterling, Council Member Tibby DeJulio, and Council Member Andy Bauman.

STAFF DISCUSSION ITEMS

1. **16-062** Consideration of Amending the City's Code of Ordinances by Adding Section 26-137 (Massage)

City Attorney Wendell Willard stated the proposed ordinance came as a recommendation from the attorney who has been handling the adult entertainment cases for the City. There are spas located throughout the City, such as the one across the street from City Hall. The spa was cited for criminal activity and then ownership of the business changed. There is activity in some spas operating outside the limits of the law. If the City chooses to stop this activity, per the proposed ordinance the activity would be treated as a nuisance. Council can pass a resolution declaring spas a nuisance and not only go after the business owner, but also the property owner. This ordinance would be another tool in the toolbox to try and combat this type of unlawful activity.

Mayor Rusty Paul asked if the ordinance would be brought back to Council as an amendment to the existing ordinance.

Council Member Gabriel Sterling asked if the proposed ordinance is the same language that is in the City's adult entertainment ordinance regarding nuisances.

City Attorney Willard responded it probably is similar to that ordinance.

Council Member John Paulson stated the ordinance states, "Which is operating in violation of the City's regulations." He asked if the business has to be cited first, then the citation be heard in court.

City Attorney Willard responded yes. The Police Department is doing a good job policing these establishments. If the police officers find unlawful activity going on, then they report that. Once it is determined that this is something that has occurred several times, then the City will take action by asking Council to have this activity declared a nuisance. The City Attorney will then proceed with an action to have the court grant an order declaring the business a nuisance.

Council Member Ken Dishman stated he helped legal staff work on this ordinance, because of complaints from his constituents. From his perspective, this is not a pervasive issue throughout the City. However, there are specific establishments where there have been issues, particularly on the north end of the City. He supports the City improving the ability to enforce this ordinance.

Council Member Gabriel Sterling stated he supports this ordinance, but wants to make sure this goes through the City's proper process of the business being cited and found to be operating an illegal business. If the business continues those types of activities, then the City would bring a nuisance charge against the business.

City Attorney Willard stated the action would be done by an order of the Superior Court.

Mayor Paul stated this action will be taken when there are serial owners and each owner is cited to the point that it is obvious the landlord is aware of these problems and is permitting a nuisance to occur.

City Attorney Willard responded that is correct.

There was a consensus of Council to move this item forward to a future City Council meeting.

CITY COUNCIL DISCUSSION ITEMS

2. 16-063 Repeal of the Percentage Rent Law

Council Member Gabriel Sterling stated he gave Council a section of the City's code that relates to alcohol. This section of the ordinance was brought to his attention by a business owner, Mr. Sheetz. Quite a few of the commercial properties in the City have a high rent level. The average rent for commercial properties since 2000 is \$25 per square foot and that includes the end of the recession. There are now properties that rent for \$30 to \$35 per square foot. Some of the older properties still rent for around \$20 per square foot. One issue the City has is that small entrepreneurial family businesses have a harder time affording the rent for the commercial properties. Hip restaurants are moving to Atlanta, Chamblee, and Doraville where they are paying a percentage rent. The businesses are paying a smaller per square foot cost until they reach \$1 million in sales.

Jason Sheetz, local business owner, stated the shared profit is lower on the front end and higher on the back end.

Council Member Sterling stated the City's ordinance now makes it harder for the businesses that have a large rent amount with a lot of employees to initially start the business. This is something Council should look at, working with the legal team to repeal or amend the law to allow for this. The businesses are allowed to come to the City Manager and state they are not a felon. The ordinance is actually intended for felons who own the land, but another person owns the business. This situation is antiquated and is not likely to happen in the City. This ordinance is impeding some of the smaller business owners. The City needs to send a message to restaurant owners and entrepreneurs that we are open to them coming to the City. The residents of Sandy Springs want these hip and better restaurants. Two Urban Licks started this way. They were paying about \$2 to \$4 per square foot on the initial rent. Now, because they are so successful, they are paying \$40,000 to \$45,000 a month in rent. This could be a good thing for the City. Mr. Sheetz had a similar deal for his new business, Under the Cork Tree, until his attorney informed him about the City's ordinance. He then had to renegotiate his contract.

Council Member Tibby DeJulio stated the ordinance states the City Manager can allow for an exemption.

Council Member Sterling stated he believes Mr. Sheetz's attorney stated if the language is in the City's code, the City Manager would not be inclined to go against that. This is an extra hurdle the City is putting in front of entrepreneurs that they should not have to go through.

City Attorney Wendell Willard stated the purpose of this provision is to prevent someone from doing indirectly what they cannot do directly. That means if someone is a convicted felon, that person cannot hold a liquor license. The purpose would be to prevent a convicted felon, who is the owner of a commercial property, from leasing the property to a business owner, who will sell liquor products and have a lease agreement based upon a percentage of sales, thereby obtaining the profits of the business as rents. The City got this idea from Fulton County's ordinance. The business owner brings in their alcohol license application for review and if the property owner is not a convicted felon, an exemption can be granted.

Council Member Sterling stated businesses can do that, but to avoid the bureaucracy, they are not doing that. The business owners avoid doing that in the event the exemption will be denied.

Mayor Rusty Paul asked if a distinction can be made between a license that serves food as well as beverages.

City Attorney Willard responded if the business is a bar.

Mayor Paul stated he was thinking the license would be for a retail package store.

Council Member Sterling stated that business is exempt already per the current ordinance.

Mayor Paul asked if a requirement could be that the business serves food.

City Attorney Willard stated alcohol pouring licenses are based upon there being food served at the establishment. The City does not license an establishment that is only a bar.

Mayor Paul stated this section deals with food.

City Attorney Willard stated the section deals with any restaurant or establishment that serves alcohol and food.

Council Member Dishman asked if language can be added that would preclude a property owner from being a convicted felon.

City Attorney Willard stated the ordinance, in paragraph C., states the City Manager has his criteria, which is not listed and is subjective.

Council Member Dishman stated this sort of arrangement should be allowed, but then there be a provision that the arrangement is allowed except for when there is a convicted felon who owns a property.

Council Member Sterling stated there is no rational way to enforce the current ordinance.

City Attorney Willard stated if there is a violation found, the license holder could lose their license.

Council Member Sterling stated there are family restaurants that will not be moving to the City and we are sending a bad message by having the current ordinance. He understands the thought process, but that is not reality at this point. He would prefer to work with Council to try to find language to update the ordinance.

Mayor Paul stated he is not opposed to finding a solution.

Council Member DeJulio stated it should not be repealing the language.

Council Member Sterling stated the language should be repealed.

Mayor Paul stated the concern is with the City spending a significant amount of time dealing with someone who tries to circumvent the pouring license process. There needs to be some controls on any proposed new language.

Council Member Sterling stated the unintended consequences as it stands is it stops small family businesses from opening more easily.

Mayor Paul stated he wants to find a way to correct this without giving a person the opportunity to come in and do something that we know has been occurring in the community. The City would not have the ability to deal with it, except with something like the current ordinance. He supports Council Member Sterling's intent.

There was a consensus of Council to have the City legal staff review the current ordinance, draft revised language, and bring the item back to the City Council.

There being no further discussion, the meeting adjourned at 7:41 p.m.

Date Approved: February 16, 2016

A handwritten signature in blue ink, appearing to read "Russell K. Paul", written over a horizontal line.

Russell K. Paul, Mayor

A handwritten signature in blue ink, appearing to read "Michael D. Casey", written over a horizontal line.

Michael D. Casey, City Clerk