

RR

**§ 87(2)(g)**

**Cause No.**

**3-09CV2369-K**

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2. Complainants are small-business owners located within the City of Dallas, Texas (“City” or “Defendant”).

3. City has written letters to Complainants stating that Dallas is revoking Complainants’ Certificates of Occupancy based upon information provided by the City of Dallas Police Department that an unlicensed massage establishment is operating and that a license is required to operate a massage establishment.

4. City is “targeting” certain types of businesses – massage establishments that are not required to be licensed – while ignoring other types of businesses, in the selective “enforcement” of City’s regulations involving Certificates of Occupancy.

5. Complainants’ ability to attract customers and conduct business is being illegally impaired while City harasses Complainants by intentionally misapplying the Texas state licensing requirements to businesses that are not required to be licensed.

6. One or more Complainants are parties to litigation in Texas state courts arising out of City’s acts described herein.

7. Complainants’ ability to attract and retain customers has been and will continue to be substantially impaired unless City ceases its illegal and unconstitutional activities. Additionally, one or more Complainants have lost business and been threatened with the termination of a property lease due to City’s communications with the property owners from whom Complainants lease their respective business locations.

8. This action challenges chapter 25A, including but not limited to Section 25A-2 of the Dallas City Code (the “Regulation”), as a violation of business owners’ property rights under the Fifth Amendment of the U.S. Constitution and Article I, Section 17 of the Texas Constitution facially and as

applied to Complainants. Further, said Regulation is unconstitutionally vague facially and as applied to Complainants.

9. In short, this action seeks to vindicate the right of businesses to operate unlicensed businesses that are not required to be licensed and prevent City from illegally "targeting" such businesses.

10. Complainants bring this civil rights and takings/inverse condemnation lawsuit pursuant to the First, Fifth and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871; 42 U.S.C. §1983; the Declaratory Judgment Act, 28 U.S.C. §2201; and Article I, section 17 of the Texas Constitution. Complainants seek injunctive and declaratory relief against enforcement of the City of Dallas, Texas Dallas City Code chapter 25A, which facially and as applied illegally burdens Complainants' and property rights. In the alternative, Complainants also seek nominal damages of \$1 for the violation of their constitutional rights.

### **JURISDICTION**

11. This court has jurisdiction of this matter pursuant to 28 U.S.C. §§1331 and 1343.

### **VENUE**

12. Venue lies in this Court pursuant to 28 U.S.C. §1391(b).

### **PARTIES**

13. Complainant Dallas Bellagio Partners, LLC operates a business located at 2018 West Northwest Highway, Suite B-2, Dallas, Texas.

14. Complainant Sangwan Anusan, d/b/a Aloha Spa, operates a business located at 2110 West Northwest Highway, Suite B, Dallas, Texas.

15. Complainant Hai C. Vu, d/b/a Blue Star, operates a business located at 11309 Emerald Street, Suite C, Dallas, Texas.

**COMPLAINANTS' ORIGINAL COMPLAINT, REQUEST FOR DECLARATORY RELIEF,  
AND APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
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16. Complainant Sangwan Anusan, d/b/a Cleopatra Day Spa, operates a business located at 2110 West Northwest Highway, Suite A, Dallas, Texas.
17. Complainant Soon D. Yoon, d/b/a Hawaii Spa, operates a business located at 2006 Market Center Boulevard, Suite A, Dallas, Texas.
18. Complainant Antonio Flores, d/b/a Jasmine, operates a business located at 11309 Emerald Street, Suite A, Dallas, Texas.
19. Complainant Phaiboon Promniang, d/b/a Moon Night, operates a business located at 11308 Emerald Street, Suite 102, Dallas, Texas.
20. Complainant Reginald Villavidendio, d/b/a The Passion, operates a business located at 11309 Emerald Street, Suite B, Dallas, Texas.
21. Complainant Sok Un Ng, d/b/a 333 Bodyworks, operates a business located at 2642 Walnut Hill Lane, Suite 100, Dallas, Texas.
22. Larry Keller, d/b/a 7<sup>th</sup> Heaven, operates a business located at 2520 Electronic Lane, Suite 801, Dallas, Texas.
23. Defendant City of Dallas, Texas, is a municipality and a political subdivision of the State of Texas, and may be served with process at City Hall, 1500 Marilla Street, Dallas, Texas 75291.

#### **FACTUAL BACKGROUND**

24. Complainants are small business owners. Their businesses are simple operations that provide basic services to customers.
25. Complainants have all received one or more written and/or verbal communications from City stating that each Complainant is operating an unlicensed "massage establishment" and stating that the Certificate of Occupancy of each Complainant is revoked. The City's revocation of each Certificate of Occupancy as stated in these City communications is without a hearing where the

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Complainant has an opportunity to be heard and also without notice of such a hearing. Further, the City's communications state that any use operating the subject property without a Certificate of Occupancy is an illegal land use that must immediately cease operating. A true and correct copy of a sample letter received from the City is attached to this Original Petition.

26. Further, certain of the communications received from the City state that the City of Dallas Police Department has stated that a "massage establishment" or some unidentified criminal activity has occurred at the business location, as a basis for the City's revocation of the Certificate of Occupancy. The City's revocation of each Certificate of Occupancy as stated in these City communications is without a hearing where the Complainant has an opportunity to be heard and also without notice of such a hearing. Further, the City's communications state that any use operating the subject property without a Certificate of Occupancy is an illegal land use that must immediately cease operating.

27. On information and belief, City has "targeted" certain business categories for City's revocation of Certificates of Occupancy.

28. City Code Section 25A-1 contains the following "Definitions" that are the basis for the enforcement of the provisions of chapter 25A:

(c) MASSAGE means any process consisting of kneading, rubbing, or otherwise manipulating the skin of the body of a human being, either with the hand or by means of electrical instruments or apparatus, or other special apparatus, but shall not include massage by duly licensed physicians and chiropractors, and registered physical therapists who treat only patients recommended by a licensed physician and who operate only under such physician's direction, nor massage of the face practiced by beauty parlors or barbershops duly licensed under the penal code of the state.

(d) MASSAGE ESTABLISHMENT means any building, room, place or establishment, other than a regularly licensed hospital, where manipulated massage or manipulated exercises are practiced upon the human body by anyone not a duly licensed physician or chiropractor whether with or without the use of mechanical, therapeutic or bathing devices, and shall include Turkish bathhouses. This term shall not include, however, duly licensed beauty parlors or barbershops or a place wherein

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registered physical therapists treat only patients recommended by a licensed physician and operate only under such physician's direction. (Ord. Nos. 13752; 15526; 17226)

29. Both definitions, and thus City's Regulation, are facially overbroad and vague. These definitions would, for example, include the activities of all personal trainers/assistants at gyms that assist customers with the use of the gym's equipment, yoga or similar instructors, or even a clerk assisting a customer with a shoehorn while trying on a pair of shoes. Further, the definition of "massage" found in City Code section 25A-1(c) illegally includes, and thus illegally regulates, every electric dryer in every public restroom because the hand dryers are included in the definition of "massage" as written. Similarly, this definition includes every public shower, whirlpool and hot tub

30. Further, section 455.005(c) of the Texas Occupations Code states that "a political subdivision may not adopt a regulation of the type described by Subsection (b) (a zoning or similar regulation of land use) that is more restrictive for massage therapists or massage establishments than for other health care professionals or establishments." City's Regulation violates section 455.005(c) of the Texas Local Government Code because it is more restrictive for massage therapists or massage establishments than for other health care professionals or establishments.

### **INJURY TO COMPLAINANTS**

31. Complainant reallege and incorporate by reference each and every allegation set forth in §§ 1 through 30 above.

32. City's communications state that City has revoked the Certificates of Occupancy held by Complainants and requires that business operations at the location cease immediately. Further, City's communications to the owners of the property where certain of the Complainants conduct business have resulted in the property owners threatening to terminate certain Complainants' leases.

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33. Further, Complainants have lost current customers and/or potential customers due to City's communications, and should City lock the doors of Complainants' businesses because the Certificates of Occupancy have been revoked, as threatened by the City.

**CLAIMS FOR RELIEF**

**A. CITY'S VIOLATIONS OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHTS.**

34. Complainants reallege and incorporate by reference each and every allegation set forth in §§ 1 through 33 above.

35. City's Regulation and revocation of Certificates of Occupancy are a violation of Complainants' procedural due process rights under the United States Constitution and Texas Constitution. This violation is facial and/or as applied to Complainants.

36. City's Regulation and revocation of Certificates of Occupancy are a violation of Complainants' substantive due process rights under the United States Constitution and Texas Constitution. This violation is facial and/or as applied to Complainants.

**B. CITY'S REGULATION IS OVERBROAD AND VAGUE.**

37. Complainants reallege and incorporate by reference each and every allegation set forth in §§ 1 through 36 above.

38. City's Regulation is overbroad and vague because its applicability and enforcement is based upon overbroad and vague definitions of "massage" and "massage establishment." This violation is facial and/or as applied to Complainants.

**C. CITY'S VIOLATION OF EQUAL PROTECTION RIGHTS.**

39. Complainants reallege and incorporate by reference each and every allegation set forth in §§ 1 through 38 above.

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40. The principle of equal protection guarantees that all persons similarly situated should be treated alike. City's "targeted" enforcement of its Regulation, upon information and belief, is discriminatory.

**D. VIOLATION OF TEXAS OCCUPATIONS CODE SECTION 455.005.**

41. Complainants reallege and incorporate by reference each and every allegation set forth in §§ 1 through 38 above.

42. City's Regulation violates section 455.005(c) of the Texas Local Government Code because it is more restrictive for massage therapists or massage establishments than for other health care professionals or establishments.

**E. VIOLATION OF PROPERTY RIGHTS.**

43. Complainants reallege and incorporate by reference each and every allegation set forth in §§ 1 through 42 above.

44. For certain Complainants whose respective businesses are closed by City's enforcement of the Regulation, City has violated such Complainants' Fifth Amendment United States Constitution and Article I, section 17 Texas Constitution rights.

**CLAIMS FOR INJUNCTIVE RELIEF**

45. Complainants reallege and incorporate by reference each and every allegation set forth in §§ 1 through 44 above.

46. As a direct and proximate result of being forced to remove signs from their windows, Complainants and others similarly situated have suffered and will suffer irreparable harm to their constitutional rights. Complainants have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendant City is enjoined from enforcing Dallas City Code



chapter 25A, Complainants and others similarly situated will continue to suffer great and irreparable harm.

47. As shown above, Complainants can demonstrate the equitable factors or irreparable injury, no adequate remedy at law, a likelihood of success on the merits, the balance of hardships and the effect on the public interest.

#### **CLAIM FOR DECLARATORY RELIEF**

48. Complainants reallege and incorporate by reference each and every allegation set forth in §§ 1 through 47 above.

49. Complainants request a declaratory judgment that City's Regulation is unconstitutional and that City's actions are a violation of Complainants' rights under the United States Constitution and Texas Constitution.

#### **CONDITIONS PRECEDENT**

50. All conditions precedent have been performed or have occurred as required by FED. R. Civ. P. 9(c).

#### **NOTICE TO TEXAS ATTORNEY GENERAL**

51. Complainants shall provide a copy of this Original Complaint to the Attorney General of the State of Texas pursuant to section 37.006 of the Texas Civil Practice and Remedies Code concurrently with the filing of the Original Complaint.

#### **REQUEST FOR RELIEF**

**WHEREFORE**, Complainants respectfully request relief as follows:

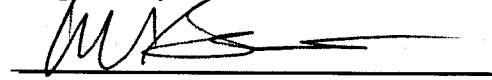
1. For entry of judgment declaring that Dallas City Code chapter 25A is an unconstitutional violation of the United States Constitution and Texas Constitution, both facially and as applied to Complainants;

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2. For entry of preliminary and permanent injunctions against the Defendant prohibiting the enforcement of City's Regulation;
3. For actual damages for the violation of Complainants' constitutional property rights and/or nominal damages of \$1 for the violation of Complainants' constitutional rights;
4. For an award of attorneys' fees, costs, and expenses in this action pursuant to Texas and federal law, including but not limited to 42 U.S.C. § 1988; and
5. For such further legal and equitable relief as the Court may deem just and proper.

Respectfully submitted,



William A. Bratton, III  
Texas Bar No. 02916300  
One Quadrangle Tower  
2828 Routh Street, Suite 850  
Dallas, Texas 75201  
(214) 871-1133  
(214) 871-0620 FAX  
**ATTORNEY FOR COMPLAINANTS**

# **EXHIBIT**



CITY OF DALLAS

July 29, 2009

CERTIFIED MAIL NO. 7002 2410 0005 0299 3842

Century Crescent PS  
PO Box 93748  
Southlake, TX 76092-0117

CERTIFIED MAIL NO. 7007 1490 0004 8092 5273

Larry Keller  
668 Lake Carolyn Parkway; Suite 106  
Irving, Texas 75039

RE: Revocation of certificate of occupancy no. 0902231016 for a personal service use at  
2520 Electronic Lane, Suite 801 ("the Property")

Dear Century Crescent PS and Mr. Larry Keller:

This letter is to inform you that certificate of occupancy no. 0902231016 is hereby revoked, and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.<sup>1</sup>

An application for a certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use.<sup>2</sup> The Dallas Police Department has informed me that you are operating a massage establishment at the Property without a license. A license is required to operate a massage establishment.<sup>3</sup> Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment, nor did you supply a copy of a massage establishment license.

Therefore, the application for this certificate of occupancy provided false, incomplete, and incorrect information about the use being operated and the requirements of a massage establishment license. The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect

<sup>1</sup> Pursuant to Section 306.13, "Revocation of Certificate of Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

<sup>2</sup> Paragraph (5) of Section 306.3, "Application for a Certificate of Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

<sup>3</sup> Section 455.151, "Licensed Required," of Chapter 455, "Massage Therapy," of the Texas Occupations Code and Section 25A-2, "Licensed Required," of Chapter 25A, "Massage Establishments," of the Dallas City Code.

information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.<sup>4</sup>

Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter.<sup>5</sup> Questions about the appeal process should be directed to the building official at 214-948-4320.

Sincerely,



Zaida Basora, AIA  
Building Official  
Building Inspection Department

c: Joey Zapata, Director, Code Compliance  
John Rogers, Assistant City Attorney  
Melissa Miles, Assistant City Attorney  
Philip Sikes, Assistant Building Official  
Jennifer Hiromoto, Chief Planner  
Christina Smith, Dallas Police Department

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<sup>4</sup> Paragraphs (2), (3), and (5) of Section 306.13, "Revocation of Certificate of Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

<sup>5</sup> Paragraph (2) of Section 306.15, "Appeals of Actions and Determinations," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code and Dallas Development Code Section 51A-4.703(a)(2).

**VERIFICATION**

STATE OF TEXAS

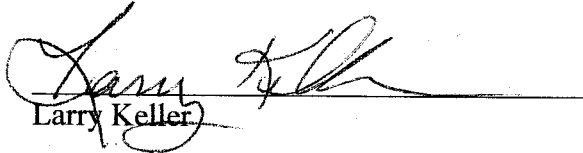
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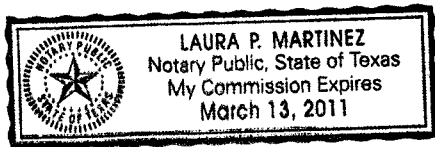
COUNTY OF DALLAS

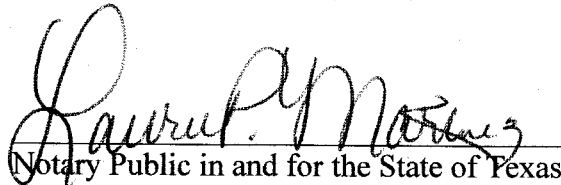
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BEFORE ME, the undersigned Notary Public, on this day personally appeared Larry Keller who, after being duly sworn, stated under oath stated that he has read the above document; that he is authorized to execute this Verification, and that every factual statement contained therein is within his personal knowledge or based upon the document(s) received from Defendant and is true and correct.

  
Larry Keller

SUBSCRIBED AND SWORN TO BEFORE ME on the 11<sup>th</sup> day of December, 2009, to certify which witness my and official seal.



  
Notary Public in and for the State of Texas

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