

City of Santa Clara

Study Session

**Review the Existing Massage
Ordinance and Discuss Next Steps**

November 27, 2018



Agenda

- **Background**
- **Current Environment**
- **Recommended Changes**
- **Questions**



Background



Regulatory History

- Prior to 2009, the regulation of massage-related businesses fell under the purview of local municipalities
- In 2009, the California Massage Therapy Council (CAMTC) was created as a result of SB 731. CAMTC took over state-wide massage regulation
- In 2015, the Massage Therapy Act (AB 1147) went into effect re-establishing authority to local jurisdictions for land use, business licensing, health and safety regulations and permits
- Acupuncture is state licensed, but has never been regulated by City



2015 Notice to Businesses

- The City sent letters notifying massage establishments, acupuncture business, and chiropractors of the new regulations after the 2015 ordinance was adopted
 - “Please be advised that all massage establishments, including acupuncture and chiropractic establishments who hire massage therapists, must meet the new requirements in Chapter 5.40 on or before the expiration of permits issued by the Finance and Police Departments, and comply with zoning requirements under Chapter 18.104 within two years from the effective date of the new regulations.”

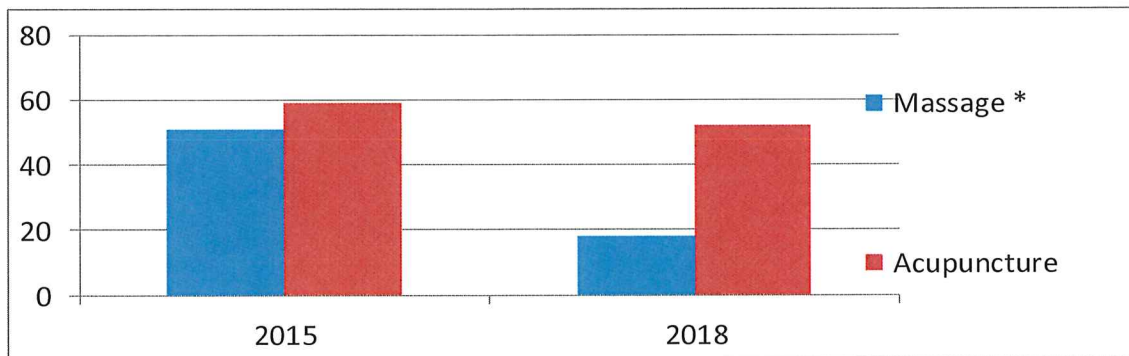
2017 Notice & Extension

- A subsequent notice letter was sent to all massage, acupuncture, and chiropractor establishments six months before the amortization period's effective date (November 2017)
- City Council extended the amortization period for another two years (December 31, 2019) in October of 2017 in order to give staff time to reevaluate the massage establishment ordinance and zoning regulations

Current Situation



Massage Related Businesses



* Licensed = in possession of Permit from the Police Department under Chapter 5.40 of the City Code

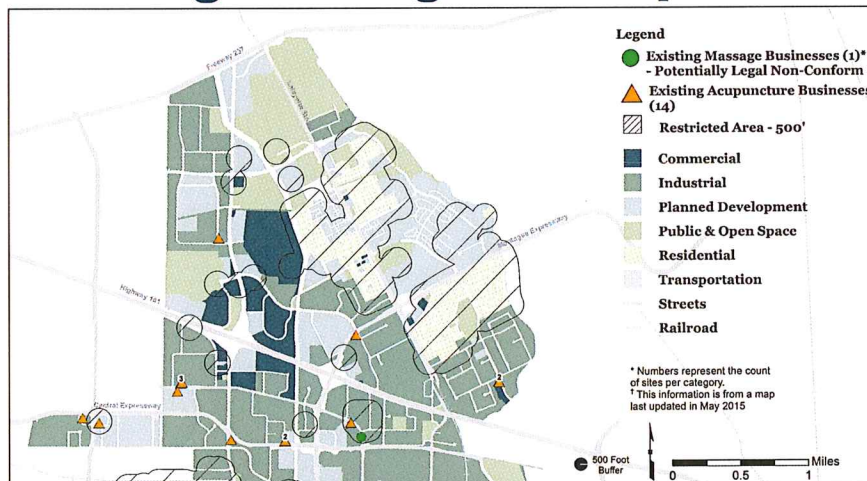


Existing Acupuncture Establishments

- If an acupuncture establishment provides massage by anyone other than the duly licensed acupuncturist, then the business is subject to massage establishment regulations under Chapter 5.40 and Chapter 18.104
- Any existing acupuncture establishment that is functioning as a massage establishment was not legally established and therefore would not be grandfathered in (illegal non-conforming)

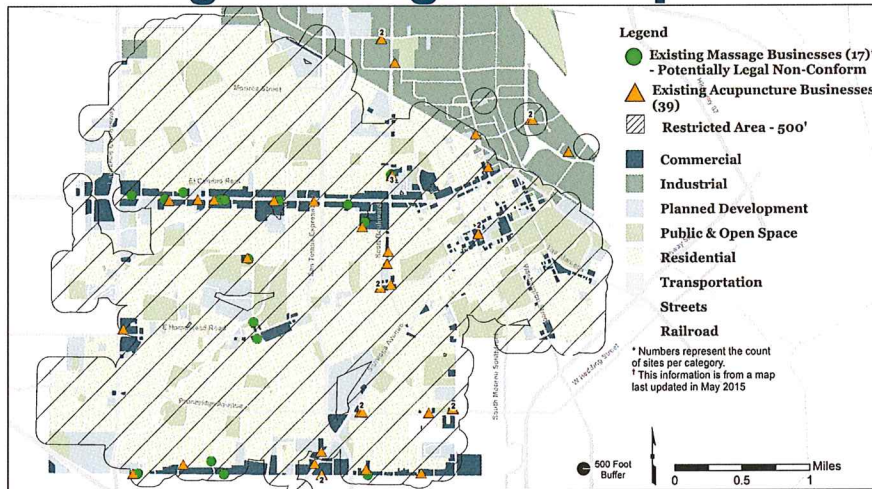
9

Existing Massage & Acupuncture Stores



10

Existing Massage & Acupuncture Stores



11

Potential Criminal Activity

- Human trafficking
- Paid sexual services
 - Reports, web reviews, admissions, advertisements, and investigations have confirmed this at several locations
- Robberies
 - Locations can be targets of such crimes
- Sexual assaults
- Acupuncture can be a front for illegitimate massage establishments

12

Recent Outreach.....

- Site visits to all acupuncture establishments
 - 18 massage and 53 acupuncture establishments visited on October 11
- Two massage locations with overt violations
 - SCPD issued citations and Chief of Police revoked the licenses
 - Massage Establishments appealed license revocation
- Two acupuncture establishments require follow-up
 - violations pending

13



Existing Massage Establishment Ordinance

- Legal non-conforming land uses
- Grandfathered in at their existing location if:
 - Meet massage licensing and permit requirements
 - Are free of repeated violations and criminal conduct
 - Meet all current massage ordinance regulations, except the Zoning Code location restrictions
- Chief of Police has the authority to revoke a permit if any Code requirements are not met
 - Appealable to the City Manager

14



Recommended Changes



Massage Establishments

- Only allow massage in places with more visibility and higher levels of current or anticipated pedestrian activity
- Limit massage establishments to commercial and planned development zoning districts which allow commercial uses
- Eliminate the use permit requirement for future massage establishments
 - Massage Establishment Permit provides for enforcement of existing sites
 - Recommended zoning districts limit use
- Required to obtain a Zoning Verification issued by the Planning Division

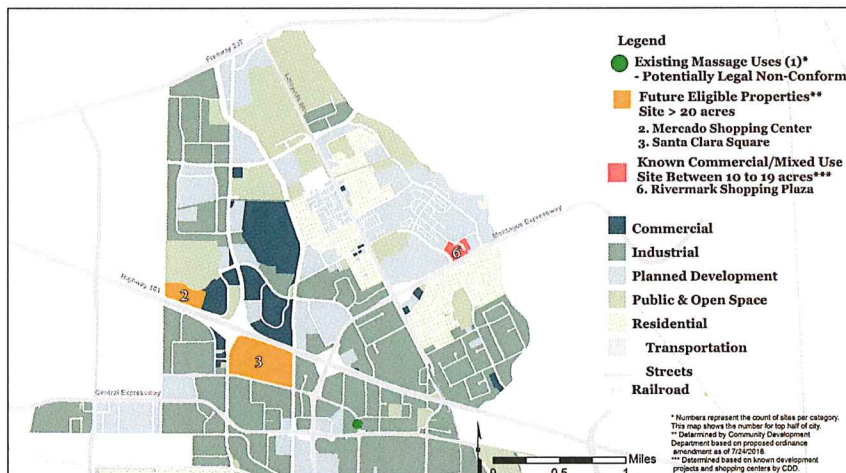


Massage Establishments

- Permitted locations:
 - Minimum 20 acre size contiguously functioning mixed use or commercial site with shared parking and circulation and a minimum of 20,000 square foot of retail space
 - Wellness center of an employment center with 500 employees or more

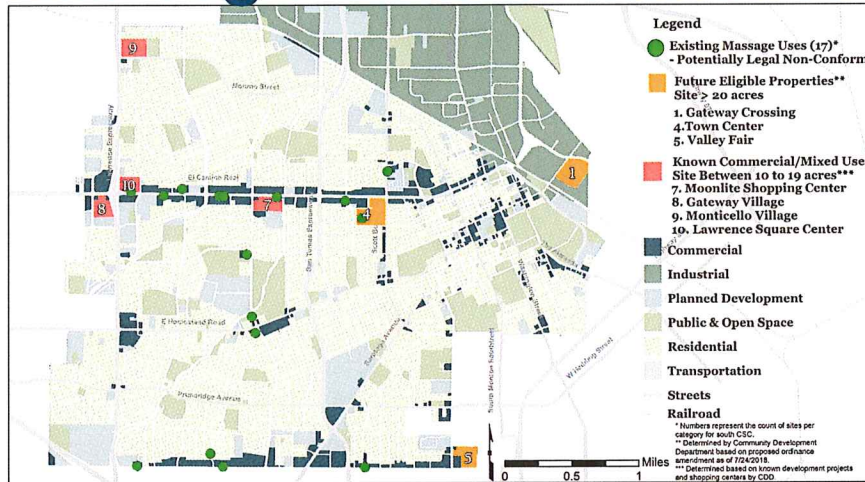
17

Massage Establishments Map



18

Massage Establishments Map



19



Proposed Ordinance Amendments

- Amendments to zoning regulations in Chapter 18.104 (“Massage Establishments”)
 - Permitted in large contiguous commercial sites and employer wellness centers
 - Grandfather clause to existing legal massage establishments
- Amendments to Chapter 5.40 (“Massage Services and Massage Establishments”)
 - Incorporate best practices (next slide)
 - Appeals of permit suspension/revocation to hearing officer instead of City Manager

20



Amendments: Massage Ordinance

Santa Clara Ordinance	Proposed Ordinance
Individual massage therapist accountability	Articulated owner accountability for establishments violations
n/a	More extensive internal permitting process, including signed acknowledgement of regulations
No violations moratorium regulation	Violations moratorium regulation (5 year)
n/a	Compliance check following application for initial permit (prior to opening), after six months of operation, and prior to annual permit renewal
n/a	Exterior window requirements
n/a	Human Trafficking notices required per SB 1193 and Civil Code Section 52.6 adopted April 1, 2013
Low registration (\$124) and renewal (\$41) fees *	Renewal and registration fees are higher (ranging from \$163-\$1,100) to ensure full cost recovery

Municipal Fee Schedule Changes

- Study fees to determine 100% cost recovery
 - Application fee (i.e. currently \$124 per therapist/Sunnyvale charges \$1,132 per establishment)
 - Renewal fee (i.e. currently \$41 per therapist/Sunnyvale charges \$1,132 per establishment)
- Study new fee(s) to add to the Municipal Fee Schedule
 - Percentage of fees application, renewal and non-compliance fees to return to Department for enforcement
 - Amendment to Permit fee (i.e. currently none/Sunnyvale charges \$30 per amendment)

Acupuncture Establishments

- Proposed ordinance would clarify that only duly authorized acupuncturists may provide massage to his/her clients without coming into purview of massage establishment regulations
 - If massage therapists other than acupuncturist provides massage, the establishment as a whole is considered a massage establishment under Chapters 5.40 and 18.104
- Site visits to ensure compliance and prevent illegal non-conforming businesses

23



Proposed Enforcement Model

- Site visits to all massage and acupuncture establishments
- At time of new application and/or renewal
 - In-person meeting with business owner (SCPD to provide an interpreter, if needed)
 - Provide copy of SCCC Chapter 5.40
 - Obtain signed acknowledgment of receipt of SCCC 5.40 and associated regulations
 - Internal documentation of the meeting

24



Proposed Enforcement Model

- Compliance inspections
 - 3-6 weeks prior to renewal date for existing establishments
 - Periodic after renewal / permit issuance
 - Internal documentation of inspections
- Violations
 - Will be analyzed for administrative sanctions v. criminal
 - Will be analyzed for suspension / revocation review
 - Additional compliance check to ensure correction of violations

25



Questions?



