



Agenda Report

18-217

Agenda Date: 11/27/2018

REPORT TO COUNCIL

SUBJECT

Study Session: Potential Amendments to the Existing Massage Ordinance

BACKGROUND

Prior to 2009, the jurisdiction of massage-related businesses fell under the purview of local municipalities. The City's Community Development Director administered zoning compliance for massage as a land use and the Finance Department handled the business license and collection of fees, while the Chief of Police managed individual massage therapist and massage establishment owner licenses to practice massage, the permitting process, verification of insurance and notification of acceptance or denial to work in Santa Clara.

The California Massage Therapy Council (CAMTC) was created in 2009, as a result of Senate Bill 731. From 2009-2015, CAMTC was the governing non-profit board in the State of California authorized to evaluate the qualifications of massage therapists or practitioners and issue certification and local jurisdictions were limited in their ability to regulate massage establishments. The massage industry can be susceptible to criminal activity, including human trafficking, paid sexual services, robberies and sexual assaults. During this timeframe, every massage business establishment was required to:

- Provide the Santa Clara Police Department with a copy or other evidence of a massage therapy organization (MTO) certificate for every person employed or retained by the business or establishment to provide massage therapy within thirty (30) calendar days of the commencement of such person's period of employment.
- Maintain on its premises a copy or other evidence of each such MTO certificate for review by the Santa Clara Police Department.

Assembly Bill 1147, also known as the "Massage Therapy Act," went into effect on January 1, 2015 and re-established the authority of local jurisdictions to impose land use, business licensing, and health and safety regulations on massage establishments including local permit requirements. CAMTC retained the responsibility of regulating the testing and certification process for individuals to provide massage therapy services.

Chapter 5.40 of "The Code of the City of Santa Clara, California" ("SCCC") sets forth the regulatory requirements for massage establishments operating within the City of Santa Clara. On September 22, 2015 the City Council approved Ordinance No. 1945 amending Chapter 5.40 and adding Chapter 18.104 ("Massage Establishments") to the City Code to be compliant with AB 1147. At that time staff determined the City's massage establishment regulations should be updated with regard to AB 1147 in order to:

- Mitigate and reduce the potential adverse secondary effects of illicit massage establishments, including, but not limited to, increased crime and the proliferation of blight in neighborhoods;
- Protect the quality of life and neighborhoods in the city, the city's retail and commercial trade, and local property values, while minimizing the potential for nuisances related to the operation of illicit massage establishments; and,
- Protect the peace, welfare and privacy of persons who own, operate and/or patronize legitimate massage establishments.

Additionally, with the adoption of Chapter 18.104, the City approved a two-year amortization period allowing for existing massage businesses with a non-conforming use to continue operating. This amortization period expired on November 17, 2017. Chapter 18.104 also established land use standards for massage activity and limited permits for new massage establishments to facilities which conformed to those standards. Existing, non-conforming establishments were allowed to remain for the two-year amortization period. As the timeframe for the amortization period neared conclusion, massage therapists and massage establishment owners approached the City Council expressing concern that the new requirements were too restrictive. The City Council subsequently amended Chapter 18.104 on October 24, 2017, to extend the amortization period for nonconforming establishments to come into full compliance by December 31, 2019. The City Council also requested that staff return to the Council with an amended ordinance that would serve the purposes set forth in AB 1147, but also allow legitimate massage establishments to continue operating in the City.

There are currently 52 businesses in the City that have obtained business licenses for acupuncture. Many of these acupuncture businesses have one or multiple massage therapists performing massage services from their location. Chapter 5.40.060 allows a licensed acupuncturist with a massage therapy certificate to provide direct massage to their clients. The Code also allows acupuncturists to make massage therapy services available to their clients performed by CAMTC certified massage therapists from their business as long as the massage therapist(s) and the establishment itself follows the requirements of massage establishments. Currently, four (4) massage therapists working from acupuncture businesses have met the City's requirements for massage establishments. However, those businesses do not meet all of the requirements of Chapter 5.40 or Chapter 18.104 as required. As the massage therapists from acupuncture businesses renew their licenses, the Police Department will inform the acupuncture owners of the requirements for massage establishments.

DISCUSSION

Senate Bill 731 was intended to professionalize the industry by creating a state-wide certification program. While doing so, it inadvertently created loopholes in local agency regulations that subsequently resulted in the location of massage establishments that do not have adequate zoning regulation, an inundation of foot massage and acupuncture parlors offering full-body massages, and the use of businesses as fronts for illicit massage operations. Now that cities have regained authority over massage establishments, it is incumbent upon staff to balance the rights of a growing profession of legitimate massage therapists against the responsibility to solve challenges caused by the less savory businesses.

Zoning Compliance

Since the 1960s, Chapter 18.70 of the SCCC has designated zoning regulations for regulated businesses referred to Section 18.70.050 as Anti-Skid Row regulations for regulated businesses.

When Chapter 5.40 was amended in 2015, Section 18.104, titled Massage Establishments, was also created. Section 18.104.020 and Section 18.70.050 of the SCCC both restrict regulated businesses or massage establishments at locations within five hundred (500) feet from another massage establishment or within five hundred (500) feet of a property line of the following:

- (a) Schools (universities, community colleges, high schools, junior high schools, elementary and nursery schools);
- (b) State-licensed child care centers and/or large family day care facilities;
- (c) Hotels, motels, or lodging houses;
- (d) Bowling alleys, ping-pong centers, electric-game centers, pool and billiard halls; and,
- (e) Any lot or parcel zoned single-family residential.

As a result of Senate Bill 731, from 2009 to 2015, local jurisdictions were limited in their ability to regulate massage establishments. The City did not require businesses established during this timeframe to apply for a land use permit. Staff identified eighteen (18) massage establishments presently in existence that do not have land use permits (see map Attachment 1). Sixteen (16) of these massage establishments do not meet the zoning regulations adopted in 2015.

Since 2015 when cities regained the ability to regulate massage establishments by land use, the 500 foot separation Zoning Code requirement has limited opportunities to locate massage uses. The map (Attachment 1) also indicates areas where massage establishments can be allowed per the current zoning regulations. Currently, there are ten potential locations where massage establishments could be permitted consistent with the current location restrictions of the Zoning Code. Many of these locations are within industrial areas that have little to no pedestrian activity. As described in greater detail in the “Proposed Revisions to the Code” sections below, these existing eligible locations are not best-suited from a visibility and street presence perspective to hinder illicit massage operations.

Illicit Massage Operations

In an effort to conform to AB 1147, the Police Department’s Nuisance Suppression Unit (NSU) has assumed responsibility for oversight of massage establishments. As of February, 2018, the City has 18 licensed massage establishments. The NSU conducted compliance checks of every licensed establishment between November, 2017 and October, 2018, and identified violations at multiple locations. A total of \$31,000 in administrative citations were issued and paid.

With this information, staff conducted an internal review of the existing municipal code in comparison with AB 1147 legislation, League of California Cities recommendations, and best practices among neighboring law enforcement agencies.

The following chart highlights aspects of the City’s current massage ordinance that may no longer be serving the City’s interests and which are not consistent with best practices in use in other local jurisdictions.

Santa Clara Ordinance	Industry Best Practice
Individual massage therapist accountability	Articulated owner accountability for establishments violations
n/a	More extensive internal permitting process, including signed acknowledgement of regulations
n/a	Violations moratorium regulation (5 year)
n/a	Compliance check following application for initial permit (prior to opening), after six (6) 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) depending on level of service provided and single therapist vs establishment with multiple therapists

**The Finance Department will be conducting a User Fee Study in Fall 2018. The Consultant performing the Study will look at these fees, in addition to other current and potential fees associated with massage activity, to ensure the city is recovering all costs to providing licensing and other services.*

Recognizing that massage is an activity to support wellness, staff is recommending a regulatory approach that balances City objectives and provides opportunities to allow massage in places with more visibility and higher levels of current or anticipated pedestrian activity.

Proposed Revisions to City Code

The proposed revision consists of amendments to Chapter 18.70, Chapter 18.104 of Title 18 (Zoning), and Chapter 5.40 of Title 5 (Business Licenses and Regulations).

Changes to Chapter 18.70, Anti-Skid Row regulations for specified regulated businesses, would include elimination of the references to massage parlors and establishments as a specified regulated business. This revision will allow massage parlors to be regulated differently from other specified regulated businesses, as referenced in Section 18.70.

Chapter 18.104 would be amended so the restrictions for locating massage establishments within 500 feet of other massage establishments or other described incompatible uses (schools, motels, childcare facilities, bowling alleys, single-family residences, etc) would be removed. Instead, massage establishments must be located in a Commercial district or Planned Development (PD) district that allows for commercial use, and the location must also meet one of the following criteria:

- The massage establishment is located in a 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; or
- The massage establishment is located in a wellness center of an employment center with 500 employees or more and shall be for employees use only.

The potential locations for massage establishments under the proposed Code changes are shown on

Attachment 2.

SCCC section 18.104.030 would be revised to eliminate the use permit requirement for future massage establishments. The Massage Establishment Permit allows the City to review any illicit activity or business license violations and revoke permits for problematic businesses. Massage establishments would need to follow the other development standards, such as signage, parking, and hours of operation, currently required in the Municipal Code and thus a use permit process would be an unnecessary process that would be duplicative of the Massage Establishment Permit. Future massage establishments will be required to apply for and obtain a Zoning Verification from the Planning Division. The Zoning Verification procedure used to determine if a proposed new massage establishment would be located in an area that meets the locational requirements set forth in the Zoning Code. Currently a Zoning Verification application costs \$388 and takes approximately one month to process.

In addition to the above suggested ordinance amendments, staff is recommending that existing permitted massage establishments be considered as legal non-conforming uses and “grandfathered” in at their existing locations as long as the business and its therapists:

1. Meet massage licensing and permit requirements;
2. Hold a valid business license in the City of Santa Clara;
3. Comply with building code regulations;
4. Are free of repeated violations and criminal conduct (misdemeanor or felony); and,
5. Meet all current massage ordinance regulations, except the Zoning Code location restrictions for massage establishments.

New massage establishments and/or existing “grandfathered” massage establishments requesting a location to location change would be required to comply with the massage ordinance in its entirety, including the zoning regulations.

The Chief of Police would continue to have the authority to revoke a permit if any Code requirements are not met for either legal non-conforming or new massage establishments. Any appeals are recommended to be considered by a hearing officer versus the City Manager or her designee.

Meanwhile, the Police Department is committed to educating massage and acupuncture establishments on the City’s amended massage ordinance to ensure these businesses come into compliance.

Acupuncture Businesses

Currently, the City has not issued any Conditional Use Permits for acupuncture businesses where massage services are being administered by individuals other than the acupuncturist. As a result, these businesses may be operating inconsistent with the current ordinance.

To address massage services within acupuncture businesses that are not being provided by a duly licensed acupuncturist, SCCC section 5.40.060 will need to be modified to explicitly state that the exemption from obtaining a massage establishment permit applies only if massage is being performed directly by the duly licensed acupuncturist.

Should an acupuncture business wish to have non-acupuncture staff provide massage, the business

will need to obtain a massage establishment permit from the Police Department. In doing so, the business will need to meet the current or proposed zoning location requirements.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

The City is in the process of hiring a consultant to conduct a User Fee Study. This Study will be used to review new and/or revised fees as necessary to support permitting and regulation of massage businesses. Proposed fee changes will be presented to the Council in the April timeframe as part of the adoption of the Municipal Fee Schedule.

COORDINATION

This report has been coordinated with the Finance Department, Community Development Department, and the City Attorney’s Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Reviewed by: Michael J. Sellers, Chief of Police

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Existing Massage Establishments with Zoning Designations and Restrictions
2. Massage Establishments with Zoning Designations and Restrictions Based on Proposed Ordinance