



Agenda Report

19-462

Agenda Date: 5/22/2019

REPORT TO PLANNING COMMISSION

SUBJECT

Action on Amendments to the City Code Chapters 18.34, 18.36, 18.42, 18.56, 18.70, and 18.104 regarding Massage Establishments

BACKGROUND

Prior to 2009, the jurisdiction of massage-related businesses fell under the purview of local municipalities. Local jurisdictions often enacted restrictions on the location and/or operation of massage-related businesses to address the industry's susceptibility to criminal activity including human trafficking, paid sexual services, robberies and sexual assaults.

The passage of Senate Bill 731 in 2008 created the California Massage Therapy Council (CAMTC) and 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.

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, and Chapter 18.104 sets forth the land use requirements for massage establishments in the City. 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.

Chapter 18.104 required only those massage establishments meeting certain locational restrictions to obtain a use permit from the City in order to operate. Existing massage establishments not in conformance with those locational restrictions and/or use permit requirements were subject to a two-year amortization period, upon which time non-compliant massage establishments would be required to cease operation. This amortization period was originally set to expire on November 17, 2017, but due to concerns expressed by members of the public, City Council amended Chapter 18.104 on October 24, 2017 to extend the amortization period to December 31, 2019 with direction to staff to return to the Council with an amended ordinance that would serve the purposes set forth in AB 1147 and also allow legitimate massage establishments to continue operating in the City.

The Community Development Department, City Attorney's Office and Police Department staff have performed research, conducted compliance checks and facilitated educational meetings as

summarized below:

Timeframe	Initiative
Fall, 2017 - Fall, 2018	Conducted compliance checks among licensed massage establishments
Fall, 2018	Staff internal review of existing Municipal Code in comparison with AB1147, League of California Cities recommendations and best practices among neighboring law enforcement agencies
November 2, 2018	Massage establishment informational meeting (English)
November 27, 2018	City Council Study Session

On November 27, 2018, the Community Development Department, City Attorney's Office and Police Department facilitated a Study Session with the City Council. The Study Session (Report to Council 18-217) addressed the regulatory history; proposed municipal code amendments, current and proposed permit and inspection and enforcement process; and outreach and education on proposed municipal code changes

At the Study Session, City Council provided direction to staff to return with amendments to the City Code as proposed by staff with additional direction to enable future massage uses at commercial sites of 10 or more acres in size and for staff to conduct outreach of the proposed Code changes to massage establishments and property owners. Additional outreach meetings with affected property and business owners were conducted on April 22, 2019 (English) and on April 23, 2019 (Mandarin).

DISCUSSION

The proposed changes to the regulatory requirements for massage-related businesses include amendments to Chapters 5.40, 18.34, 18.36, 18.42, 18.56, 18.70, and 18.104 of the SCCC. Pursuant to SCCC section 18.112, the Planning Commission is to issue a recommendation to City Council regarding any amendments to the Zoning Code (Title 18 of the SCCC). As such, the proposed changes to Chapters 18.34, 18.36, 18.42, 18.56, 18.70 and 18.104 are being presented to the Planning Commission and are described below.

Regulatory History and Current Zoning Code

Since the 1960s, Chapter 18.70 of the SCCC has designated Anti-Skid Row zoning regulations for regulated businesses in SCCC section 18.70.050 (as defined in SCCC section 18.70.030). Massage establishments, a regulated business under this Chapter, were subject to the same locational restrictions as all other regulated businesses and required to obtain a use permit. Because 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 nineteen (19) massage establishments presently in existence that were established during this period.

When Chapter 5.40 was amended in 2015, Section 18.104, titled Massage Establishments, was also created and reestablished the locational restrictions and use permit requirement. 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.

Since 2015, when cities regained the ability to regulate massage establishments by land use, the 500 foot separation requirement in the Zoning Code has limited opportunities to locate new massage uses. The attached map (Attachment 2) indicates areas where massage establishments can be allowed per the current zoning regulations. Currently, there are a very limited number of potential locations where massage establishments could be permitted consistent with the current Zoning Code restrictions. Many of the eligible locations are within industrial areas that have little to no pedestrian activity and are not best-suited in terms of visibility and street presence to discourage illicit massage operations.

Proposed Amendments to Zoning Code

Recognizing that massage can be 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. At the November 27, 2018 City Council Study Session, staff received feedback to move forward with proposed amendments to Title 18 of the SCCC to remove the restrictions on locating massage establishments within 500 feet of other massage establishments or other identified incompatible uses (schools, motels, childcare facilities, bowling alleys, single-family residences, etc.), and establish sites where massage establishments would be permitted uses.

At the November 27, 2018 City Council Study Session staff presented two options for a minimum size of sites on which new massage establishments can locate: commercial sites of a minimum size of 10 or 20 acres. The City Council provided input to move forward with the 10-acre minimum site requirement so that there would be more potential sites available. Based on this feedback, Chapter 18.104 is proposed to be amended so that new massage establishments must be located in a Commercial, Mixed Use 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 on a minimum 10-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 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 3.

SCCC section 18.104.030 would also be revised to eliminate the use permit requirement for future massage establishments as a Use Permit process would be unnecessarily duplicative given the

requirement of a Massage Establishment Permit. The requirement for a Massage Establishment Permit administered by the Police Department would remain in place and allow the City to review any illicit activity or business license violations and revoke permits for problematic businesses. Massage establishments would need to follow other development standards, such as restrictions on signage, parking, and hours of operation, currently required in the City Code.

Future massage establishments will be required to apply for and obtain a Zoning Verification from the Planning Division. The Zoning Verification procedure will be used to determine if a proposed new massage establishment meets the locational requirements set forth in the Zoning Code. Currently a Zoning Verification application costs \$413 and takes approximately one month to process.

At the November 27, 2018 City Council Study Session, staff received positive feedback to move forward with enabling existing permitted massage establishments to be considered as legal non-conforming uses and “grandfathered” in at their existing locations if 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 change from one site to another within Santa Clara would be required to comply with the massage ordinance in its entirety, including the zoning regulations.

The proposed ordinance will go into effect thirty (30) days after adoption by the City Council. For Chapter 18.104, massage establishments that do not meet the new zoning requirements have one year (the “amortization period”) to comply, unless the massage establishment is deemed grandfathered as set forth in the Code as revised. Any new massage establishments will be reviewed for compliance with all the proposed requirements in effect at the time of an application to the City.

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

There is no fiscal impact from these changes to the Zoning Code. Time spent by staff through the Zoning Verification process will be recouped through fees paid by applicants.

COORDINATION

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

PUBLIC CONTACT

Newspaper notice of this item was published in the Santa Clara Weekly on May 8, 2019. Public contact was made also by posting the Planning Commission 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 or at the public information desk at any City of Santa Clara public library.

Outreach meetings to potentially affected business owners were conducted on November 2, 2018, April 22, 2019 (English) and April 23, 2019 (Mandarin).

ALTERNATIVES

1. Recommend that the City Council adopt the proposed Amendments to Chapters 18.34, 18.36, 18.42, 18.56, 18.70 and 18.104 of the Zoning Ordinance of the City Code regarding Massage Establishments.

2. Recommend that the City Council not adopt the proposed Amendments to Chapters 18.34, 18.36, 18.42, 18.56, 18.70 and 18.104 of the Zoning Ordinance of the City Code regarding Massage Establishments.

RECOMMENDATION

Alternative 1:

Recommend that the City Council adopt the proposed Amendments to Chapters 18.34, 18.36, 18.42, 18.56, 18.70 and 18.104 of the Zoning Ordinance of the City Code regarding Massage Establishments.

Reviewed by: Andrew Crabtree, Community Development Director

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Chapter 18 Ordinance Amendments Ordinance
2. Map of Current Zoning Requirements for Massage Establishments
3. Map of Proposed Zoning Requirements for Massage Establishments