

ORDINANCE NO. 3133-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND SEVERAL CHAPTERS OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) AND TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) OF THE SUNNYVALE MUNICIPAL CODE TO AUTHORIZE THE DENIAL, SUSPENSION OR REVOCATION OF A PERMIT OR LICENSE BASED UPON VIOLATIONS OF WAGE AND HOUR LAWS.

WHEREAS, the City of Sunnyvale has a commitment and a responsibility to ensuring that employers pay workers the wages to which they are legally entitled; and

WHEREAS, the City of Sunnyvale desires to amend certain sections of the Sunnyvale Municipal Code in Titles 5 and 9 to authorize the denial, suspension or revocation of a permit or license based upon the violation of wage and hour laws.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 5.28 AMENDED. Sections 5.28.060 and 5.28.110 of Chapter 5.28 (Peddlers) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code are hereby amended to read as follows:

5.28.060. Investigation and license issuance.

- (a) [Text unchanged]
- (b) The director of public safety shall deny an application for a license if he or she makes any of the following findings:
 - (1) - (7) [Text unchanged]
 - (8) Within the last five years, the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or~~ and the time for filing an appeal has passed ~~and no appeal was filed~~.
- (c) – (d) [Text unchanged]

5.28.110. Peddler—Revocation of license.

- (a) A license issued under this chapter may be suspended or revoked by the director of public safety for any of the following causes:
 - (1) - (5) [Text unchanged]

(6) The applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

(b) [Text unchanged]

SECTION 2. Chapter 5.32 AMENDED. Sections 5.32.040 and 5.32.080 of Chapter 5.32 (Private Patrol Service) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code are hereby amended to read as follows:

5.32.030. Permit—Application and bond requirements.

(a) – (d) [Text unchanged]

(e) The application may be denied if within the last five years the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

(f) The chief of the department of public safety shall report the results of his investigation and his recommendation upon the application to the city manager for approval prior to the issuance of a permit.

5.32.080. Revocation of permit or license.

(a) A permit or license issued under the provisions of this chapter may be revoked by the chief of the department of public safety with the approval of the city manager, if the holder thereof has violated any of the provisions of this chapter, or the laws of the state of California, or the United States, the violation of which reflects unfavorably upon the fitness of the holder of the permit or license to offer a private patrol service, or be employed in offering such service, or has otherwise acted in such a manner as to demonstrate his unfitness to offer such private patrol service, or to be employed in offering such service. Additionally, the permit or license may be revoked if the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

(b) [Text unchanged]

SECTION 3. Chapter 5.36 AMENDED. Sections 5.36.050 and 5.36.140 of Chapter 5.36 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code are hereby amended to read as follows:

5.36.050. Franchise—Application.

(a) [Text unchanged]

(b) In addition to the items of information required in subsection (a) of this section, the applicant shall, together with the franchise application, furnish the following:

(1) – (4) [Text unchanged]

(5) A statement that within the last five years the applicant has not failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

5.36.140. Franchise revocation.

(a) The director of public safety, or designee, may revoke the franchise granted under this chapter, if any of the following determinations are made:

(1) – (6) [Text unchanged]

(7) If the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

(b) – (e) [Text unchanged]

SECTION 4. Chapter 9.40 AMENDED. Sections 9.40.040, 9.40.070 and 9.40.100 of Chapter 9.40 (Adult Entertainment Establishments - Licenses) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code are hereby amended to read as follows:

9.40.040. Adult business license required.

(a) [Text unchanged]

(b) A license shall be issued to any applicant who has met all conditions under this chapter and complied with all of the following requirements:

(1) – (4) [Text unchanged]

(5) The applicant has submitted a statement that within the last five years the applicant has not failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

(c) [Text unchanged]

9.40.070. Denial of license.

(a) Within thirty days of receipt of a completed application and payment of fees, the director shall deny an application for a license upon making any of the following findings:

(1) – (4) [Text unchanged]

(5) Within the last five years, the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

(b) [Text unchanged]

9.40.100. Grounds for suspension or revocation.

A licensee may be subject to suspension or revocation of a license issued pursuant to this chapter, or be subject to other appropriate disciplinary action, for any of the following grounds arising from the acts or omissions of the licensee, or an employee, agent, partner, director, stockholder, or manager of an adult business:

(a) – (f) [Text unchanged]

(g) If the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

SECTION 5. Chapter 9.41 AMENDED. Sections 9.41.090, 9.41.110 and 9.41.170 of Chapter 9.41 (Massage Establishments and Professionals) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code are hereby amended to read as follows:

9.41.090. Permit application.

The owners of the massage establishment shall file an application for a permit on a form provided by the director. The application shall be accompanied by the fee established by the city's fee schedule. The application shall include the following information:

(a) – (m) [Text unchanged]

(n) A statement that within the last five years the applicant has not failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

9.41.110. Permit denial.

The director may deny an application for a massage establishment permit on any of the following grounds:

(a) – (k) [Text unchanged]

(l) Within the last five years, the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

9.41.170. Revocation or suspension.

All massage establishment operators shall be deemed to know and understand the requirements and prohibitions of this chapter. Any massage establishment permit issued pursuant to this chapter may be suspended or revoked by the director after a hearing, where the director finds that any of the following have occurred on even a single occasion:

(a) – (k) [Text unchanged]

(l) If the applicant has failed to comply with a final court order or administrative action of an investigatory agency finding a violation of applicable federal, state and local wage and hour laws, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or prevailing wage requirements. For purposes of this subsection, a final court order or administrative action is one as to which there is ~~either~~ no pending appeal ~~or and~~ the time for filing an appeal has passed ~~and no appeal was filed~~.

SECTION 6. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(5), that this ordinance is exempt from the

requirements of the California Environmental Quality Act (CEQA) in that it is not a Project because of governmental policy making and administrative activity that will not result in direct or indirect changes in the environment.

SECTION 7. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 9. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on April 10, 2018, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney