

RESPONSE TO COUNCIL QUESTIONS RE: 9/29/15 AGENDA

Consent Calendar:

Item 1.C.

The report (correctly) states that we boosted road maintenance to achieve a PCI of 80+. The reports I can recall seeing have taken us up to 79, but never to 80. What is our current PCI, and are we going to achieve 80, or have we simply said "this is good enough"?

Staff Response: Per the official MTC listing, released in April 2015, the three-year running average for Sunnyvale is 77 for 2012- 2014. Our records indicate a (one year) PCI of 78 at the end of 2014. Available funding, balanced against increased costs, make it harder to achieve a PCI level of 80. However, we continue to work to raise the PCI by all available methods, including reviewing treatment types and how available funds should be prioritized.

Public Hearing/General Business:

Item #2

Does the April 30th termination date (plus any subsequent cleanup) create a timing issue for transferring the new Fire Station 5 to the City?

Staff Response: The license agreement anticipates the shelter closing on March 31 and allows a maximum 30-day period to remove all improvements and materials on the site, or until April 30. The Fire Station should be completed by the end of March. Staff has coordinated with Jay Paul on the slight delay in executing the land swap. This delay does not impact the agreement with the Air Force. Staff will process the land exchange documents in advance of the transfer date to minimize additional delays.

Item #3

The "typical section enlargement" shows a left turn lane on northbound Mathilda in the top plan view, and then appears to show no left turn lane on northbound Mathilda at Iowa, in the bottom elevation view. Which is it to be?

Staff Response: The typical section enlargement is "cut" on the northerly side of the intersection (labeled as E-E), which means that it shows the section of the road where E-E is placed in the plan. In this section, there is a double left turn lane in the southbound direction, and this is reflected in the typical section.

How would street cleaning work for buffered bike lanes, would the lanes get cleaned, or would debris accumulate in them?

Staff Response: There are two options cities typically use. They purchase a smaller sweeper that fits within the buffered area, or they contract out to companies that already have the equipment. If Sunnyvale ultimately decides to construct a physically buffered bike lane, a maintenance plan will need to be developed, including additional funding needs.

Could staff summarize what public outreach was conducted with residents vicinity of Washington Park and Charles St. Was a card sent to neighborhood associations, or neighbors within a certain distance? Was a note posted to Facebook or nextdoor? I am just asking: will this come as a surprise to folks, or were there opportunities to attend a meeting and ask questions already?

Staff Response: All properties adjacent to the plan line area received postcard mailers. Email notification was sent out to the Downtown Association, and a notice was posted on Next Door for the Washington Park area. Two neighbors from the Washington Park area attended the community meeting.

On page 3 of "plan line" it shows lines going through the Nokia building. What does that mean? I think it means this was a satellite photo from an angle, and the line coincides with the existing public sidewalk edge - is that correct?

Staff Response: The Nokia development site has already dedicated the necessary right-of-way to accommodate bike lanes. The appearance of the plan line going through an existing building is due to the angle of the aerial photograph.

Are we continuing to keep to the policy of removing curb cuts as properties redevelop on Mathilda, favoring access via side streets to signalized intersections? Or does this action imply any change to that?

Staff Response: This action does not propose any changes to the policy.

Does this change on net increase or decrease the area subject to existing/future public access easements or right of way, as properties redevelop. That is, is a property owner on Mathilda gaining buildable area with this? I think the answer was a given in the PC hearing was: no.

Staff Response: The plan line does not provide a property owner additional buildable area.

Were points of clarification referenced in the BPAC minutes and motion, incorporated in the staff recommendation?

Staff Response: Yes. Points of clarification were minor changes to text within the report and were incorporated into the version that the Council is now seeing.

Item #4

Do other cities have ordinances like this? Did we once have an ordinance like this? How does this compare to our prior restrictions on massage businesses, e.g., circa 10 years ago.

Staff Response: Surrounding cities with Massage Ordinances are: Mountain View, Santa Clara*, San Jose*, Los Altos, Cupertino, Palo Alto.

*=Revised recently as a response to AB 1147, see news article at http://www.mercurynews.com/bay-area-news/ci_27999023/santa-clara-co-cracks-down-massage-parlors

Ordinance 2585-98, approved 12/17/98, required all massage therapists and massage establishments to be licensed by DPS. Amended by 2913-10 (Feb 17, 2010), it allowed for either DPS-licensed therapists OR CAMTC-certified therapists.

As i understand it this ordinance has the potential to put out of business 32-25=7 businesses if they do not achieve 500 hours of training in the six months after the ordinance passes, correct? is the number of businesses larger? the report also mentions "200 potentially affected businesses"

Staff Response: Under the current ordinance, all 32 massage establishments are licensed and meeting the requirements therefor. There will be no new requirement that the business/establishment owner be CAMTC certified; the requirement for certification applied to MASSAGE THERAPISTS only.

Regarding the requirement for hours, no business owner will be required to achieve 500 hours. Under the current ordinance, all massage therapists who have not been certified by CAMTC are required to be licensed by DPS which includes educational certification and 500 hours or practice, either through 500 hours of instruction or a combination of 250 hours of instruction plus 250 hours of practical experience. However, there are currently no massage practitioners in Sunnyvale who are not CAMTC certified and operating under City-issued licenses.

Regarding the 200 potentially affected businesses, a list of businesses or individuals pulled from the City's business license database was invited to an informational meeting to hear about the proposed amendments to SMC Chapter 9.41. This included massage professionals working independently or at massage establishments, and businesses or offices utilizing massage professionals such as doctors, chiropractors, or other licensed healing professionals, fitness centers, etc.

Is it realistic to think that someone can achieve 500 hours of training in six months while carrying on a business? I am wondering if a longer period is more realistic? I see in this Nov 2014 article: <http://www.massagetoday.com/mpacms/mt/article.php?id=14990>

It is stated: In a Notice to CMP's, CAMTC states, "While CAMTC will no longer accept applications for CMP certification in 2015, " When do we think CAMTC will cut off applications for 2016? I'm not sure six months is enough time...

Staff Response: See the response above. This will not affect persons currently doing business as either therapists or massage establishment owners in the City of Sunnyvale.

To Clarify: CMP (Certified Massage Practitioner) used to be an alternative to CMT (Certified Massage Therapists). CAMTC granted exceptions and extended time for completion of hours to CMP's who applied in a timely manner for CMT licenses, but moving forward all massage professionals in the state will be CMT's.

Could the staff be clearer on what it is they are trying to avoid with the ordinance? From news stories, I infer prostitution and human trafficking. Anything else? Could staff then articulate how it is that this ordinance helps avoid that? That is to say, how is enforcement aided by this ordinance?

Staff Response:

1.The new ordinance eliminates City-issued massage therapist permits; since there are currently no massage professionals in the City operating under City-issued permits (all are CAMTC certified at present), we are eliminating outdated code in favor

of something that is more relevant to the current business environment. CAMTC-certified therapists can operate anywhere in the state – a Sunnyvale massage therapist could also work in Mountain View or Santa Clara without having to go through any application process or pay additional fees. This is an advantage for Massage Therapists who work in multiple locations or who want to change jobs.

2. Requiring that all massage therapists to wear CAMTC-issued Identification badges while practicing will make it easier for officers to identify them when performing semi-annual and license renewal inspections of massage establishments.

3. All massage establishments are subject to inspection; requiring home-based massage businesses to be licensed allows for periodic inspection of those businesses.

4. Business owners/establishment operators will be legally liable for any activities on the premises, whether they are there when it happens or not. This gives owners more incentive to make sure that no illegal activities take place.

I am worried that we may be hammering legitimate businesses with a lot of requirements and hurdles, for the sake of getting at the bad actors. Wouldn't the ability to enter and inspect the business provide staff with the enforcement ability to avoid [whatever we are trying to avoid as indicating in staff's answer to question 3]? Could we simply impose a requirement that massage businesses should be accessible, like restaurants, for a health officer inspection? I believe our SMC still references a city health officer.

Staff Response: Staff already has the ability to inspect establishments, except home-based massage – the proposed Ordinance takes care of that. The proposed Ordinance does not add any new requirements to owners or therapists – it actually reduces annual fees and allows non-CAMTC certified therapists who are working for exempt healing professionals to apply for an exemption from CAMTC certification requirement.

We do not see reference to a city health officer as it specifically relates to SMC 9.41. City health officer reference can be found in Title 12. Water and Sewers, Chapter 12.28. Cross-Connections and Backflow Protection.

How many arrests for prostitution did Sunnyvale have in the last year for which data are already summarized and available? How many of these were at an establishment billing itself as a massage place? How many were home businesses? Other than prostitution, what other crimes have arrests been made for at places advertising themselves as massage places, and how many arrests in the last already reported-out year.

Staff Response: There have been two arrests for prostitution in the last year. The cases did not involve permitted establishments within the city or legitimate home businesses. Without conducting more research, we are unable to identify other crimes or arrests associated with massage establishments. Although there have only been two arrests, DPS has received information regarding possible prostitution activity at several of the massage permitted establishments during the last year. In response DPS has conducted compliance checks at all of the permitted businesses. In approximately 1/3 of the inspections an ordinance violation was noted. The violations included evidence of prostitution activity and other less serious violations. Notices of correction were issued for all violations and DPS continues to follow-up with each of the establishments who were found to be in non-compliance.

I see one commenter on the above-mentioned article asks: "If I go to the home of a woman with cancer to provide lymphatic drainage, how does that make me a prostitute? " Does our ordinance limit the ability of a person to go to someone else's residence, or hotel room, to provide massage services? It references out calls, and so I infer they are permitted, is that correct?

Staff Response: Outcalls are permitted under the proposed Ordinance. As with the current code, all massage practitioners must be licensed and have identification when performing massage services either in a massage establishment or while on call.

I am not seeing how this ordinance helps DPS go after a situation in a hotel room, if they don't otherwise have probable cause to enter. And if they do have probable cause, why do they need the ordinance?

Staff Response: Massage therapists will be required to wear CAMTC-issued identification and adhere to standards of dress and conduct established by CAMTC; therefore, legitimate therapists are easily distinguished from those engaged in illegal activities and posing as therapists.

Re 9.14.140 (a) (2) - For a home based massage business, do we really want folks posting hours of operation in the windows? I am not sure I would like my neighbors doing that; I think it would look kind of tacky. Why would this even make sense in the internet age?

Staff Response: The language could be clarified, but the intent is clearly for store-front establishments (... "shall be displayed in a conspicuous public place in the reception and waiting area and in any front window.."). We cannot assume that everyone patronizing a massage establishment has access to the Internet when we are enforcing hours of operation.

9.14.140 references "public place on the premises". What if it is a home business and there is no public place?

Staff Response: See above.

9.14.020 (h) Is a club with a membership fee, that has a steam room, regulated by this ordinance? What if there is a jacuzzi bath where people wear bikinis? What if there is an area where folks get naked?

Staff Response: The ordinance defines massage therapy as the skillful application of touch ... an establishment with a steam room would only be regulated by the ordinance if the baths included massage therapy.

What concerns would staff have with an ordinance that mainly required fingerprinting anyone and everyone that has anything to do with the business as defined, and doing an agency check? Would that not screen out the bad actors?

Staff Response: The existing Ordinance already requires fingerprinting all parties associated with the massage therapy business, either by DPS or CAMTC. Also required is verification that the persons performing therapy are properly trained (you can actually injure someone if performing massage incorrectly.) The Ordinance governing massage doesn't just protect the public from "bad actors"... it ensures that the services provided are in the interest of public health and safety.

The RTC says that we had outreach meetings, and that 27 people had attended. But the RTC provides no public feedback, and it also doesn't provide the minutes from the relevant Planning Commission meeting. It feels like we're going into this blind to any reaction by the community to imposing a \$1k fee on a number of our businesses.

Staff Response: The outreach meetings were informational meetings, introducing the new State law and the proposed ordinance to massage professionals and establishment owners. Public Comment is reserved for the Council Meeting on September 29. The Planning Commission meeting minutes are still in draft form.

The fees discussed are already being imposed under current SMC on non-CAMTC certified owners (7 out of 32): the proposed Ordinance actually recommends a slight reduction in fees (from \$1,149 to \$1,060). The new \$999 for CAMTC-certified owners allows DPS to recover the cost of issuing permits that are required by SMC. Previous State law prohibited the collection of fees from CAMTC-certified owners; AB 1147 returns authority to regulate massage establishments to cities and removes that prohibition.

The most significant change for current massage establishment owners is the imposition of legal liability for the actions of their employees/agents that occur on the premises of massage establishments, regardless of whether the owner is present at the time.

The other significant change is the classification of home-based massage businesses as massage establishments. The State now prohibits us from treating home-based massage business differently than any other home-based business. The proposed Ordinance will allow home-based massage businesses to operate in Sunnyvale provided they obtain a permit. The permit for a home-based massage establishment has the same cost as a store-front business because staff activity to issue the permit is the same. Permitting home-based massage businesses also has an advantage in that DPS will know where these operations are and will inspect them regularly.

Item #5

If I'm reading the Open City Hall summaries correctly, it appears that in response to the Draft Success Criteria, we had four residents out of 12 written comments that listed "don't sell land" (or some variant) as essential to the Criteria. Does staff believe that an entire range of funding options should be eliminated from the Criteria on the basis of input from only four residents?

Staff Response: The success criteria are not intended to be a test that options will pass or be eliminated. If preserving City ownership of land at the Civic Center was adopted as a success criterion, alternatives that preserved land would rank higher under that criterion than alternatives that proposed to use land for other uses. Staff doesn't envision that any alternative will meet every success criteria but some will meet more than others and that may assist Council in choosing a final alternative to move forward with.

Additionally, it would seem that the changes being proposed in item 5 and the budget modification in item 6 are somewhat in conflict. Does it make more sense for the proposed

edit to the Criteria to be Preserve Open Space and City Ownership of Civic Center Land?

Staff Response: Yes. Staff agrees this proposed change is intended to apply to land at the Civic Center.

In general, I'm having a hard time accepting that any edits are warranted, given such a very small response to the surveys.

Staff Response: It's certainly Council's prerogative to make no changes.