



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Introduce an Ordinance Amending Chapter 9.41 (Massage Establishments and Massage Therapists) and Title 19 (Zoning) of the Sunnyvale Municipal Code; Adopt a Resolution Amending Related Fees, Rates and Charges; and Find CEQA Exemption per Guideline 15061(b)(3)

#### **BACKGROUND**

The City of Sunnyvale has a long history of regulating massage establishments and massage therapists under Sunnyvale Municipal Code (SMC) Chapter 9.41. SMC Chapter 9.41 was last amended in FY 2010/11 (RTC 10-021, Ordinance No. 2913-10) to comply with Senate Bill 731, the Massage Therapy Act (SB 731), which established uniform State and local regulation of massage businesses and massage professionals and imposed limitations on the power of cities and counties to regulate massage professionals. A private, non-profit organization, now known as the California Massage Therapy Council (CAMTC), was established to certify massage professionals on a Statewide level, conduct background checks, and investigate schools offering massage degrees.

The regulatory plan envisioned by SB 731 was not entirely successful; in response, the Legislature passed Assembly Bill 1147, Massage Therapy (AB 1147), effective January 1, 2015, to restore local governmental authority to regulate massage establishments and business through ordinances that govern zoning, business licensing, and reasonable health and safety requirements. In summary, AB 1147 (Attachment 3) institutes the following key changes:

1. It reconstitutes the CAMTC's board, adding public members as well as a position for a police chief.
2. It raises professional standards for massage professionals, and clarifies that CAMTC certified massage professionals can practice in any jurisdiction without being required to meet additional background check requirements or obtain any further training and education.
3. It provides protection for consumers to help ensure their privacy, safety, and protection, including revocation of CAMTC certificates for registered sex offenders.
4. It authorizes local governments to adopt and enforce local ordinances that govern zoning, business licensing, and reasonable health and safety requirements.

Currently, there are 32 active massage establishment permits in the City of Sunnyvale; of these, 25 establishments are operated by CAMTC-certified owners. There are no current active City-issued licenses to individuals practicing massage therapy.

#### **EXISTING POLICY**

##### **General Plan**

Chapter 6: Safety and Noise (SN), Goal SN-3 Safe and Secure City - Ensure a safe and secure environment for people and property in the community by providing effective public safety response

and prevention and education services.

### Chapter 3: Land Use and Transportation (LT):

Goal LT-4 Quality Neighborhoods and Districts - Preserve and enhance the quality character of Sunnyvale's industrial, commercial and residential neighborhoods by promoting land use patterns and related transportation opportunities that are supportive of the neighborhood concept.

Policy LT-4.1 Protect the integrity of the City's Neighborhoods; whether residential, industrial or commercial.

## **ENVIRONMENTAL REVIEW**

Amending the massage ordinance and revising zoning definitions for consistency does not require environmental review because it can be seen with certainty that there is no possibility that these actions will have a significant effect on the environment. (CEQA Guidelines Section 15061(b)(3).)

## **DISCUSSION**

The ordinance (Attachment 1) is being proposed to comply with AB 1147, and consists of amendments to SMC Chapter 9.41 of Title 9 (Public Peace, Safety or Welfare), and to Title 19 (Zoning).

### **Chapter 9.41. Massage Establishments and Massage Therapists**

The proposed ordinance re-titles this chapter "Massage Establishments and Professionals," and makes amendments to clarify standards and definitions, and rearranges, deletes and adds provisions. The most significant changes are highlighted below.

1. CAMTC Certification. The current code offers provisions for a non-CAMTC certified person to apply for and obtain a massage therapist license from the City. The revised code eliminates this provision and requires that all massage professionals doing business in the city be CAMTC certified.
  - a. Massage establishment operators or owners will be responsible for ensuring that all employees and contractors providing massage are CAMTC certified, and will be provided six months after the City's ordinance revisions are approved to come into compliance.
  - b. CAMTC certified massage professionals will have met the requisite standards of preparation and education (500 hours of massage education and training from a CAMTC approved school) to merit their designation and will have undergone an extensive background check and fingerprinting.
  - c. CAMTC certified massage professionals are required to post their original certification credentials and wear state-issued identification badges at all times while practicing massage.
  - d. The CAMTC can investigate complaints made against a certified massage professional and take action when appropriate.
2. Massage Establishment Permit. Under the revised code, all owners of a massage establishment will be required to file a permit application accompanied by the established application and/or renewal fee. If the establishment owner is not CAMTC certified, the individual will be required to undergo a background check by the Department of Public Safety (DPS).
3. Exceptions. The current code provides exceptions to permit requirements for massage professionals working for a doctor, chiropractor, acupuncturist, or other licensed healing

professionals. While doctors, chiropractors, and other licensed healing professionals themselves will continue to be exempt from having a massage establishment permit under the revised code, all massage professionals employed by the doctor, chiropractor, etc. are required to be CAMTC certified.

4. Limited Exception to CAMTC Certification. A limited exception was developed in response to input received during the public outreach process. The exception will allow those individuals who have worked for multiple years for a doctor, chiropractor, acupuncturist, or other licensed healing professional to apply for a limited duration exception from the CAMTC certification requirement upon meeting specific criteria. These criteria include, but are not limited to: evidence of five years of ongoing employment as a massage therapist by a professional listed in SMC section 9.41.050 (a)(1); proof of training or certification prior to establishment of current CAMTC requirements; and evidence that the therapist had attempted to obtain certification from CAMTC but failed to meet the current prerequisites related to education and training. This exception would sunset January 2017.
5. Posting requirements. A provision will be added requiring massage establishments to comply with CA Civil Code Section § 52.6 related to the posting of information for victims of human trafficking.
6. Violations. The current code provides that any individual found to be in violation of any provision in the chapter is subject to enforcement remedies. The revised code will additionally hold all owners and operators of the massage establishment jointly and severally responsible for the conduct of all massage establishment employees, agents, independent contractors, or other representatives while such persons are on the premises of the massage establishment and/or providing outcall massage services on behalf of the massage establishment.

## **Title 19. Zoning**

The proposed changes to the Zoning Code are to clarify and amend sections relating to massage. The Planning Commission reviewed the proposed amendments to Title 19 on September 14, 2015.

1. Adult Businesses. A local jurisdiction may no longer define a massage establishment as an adult entertainment business, or otherwise regulate a massage establishment as adult entertainment. Chapter 19.60 (Adult Businesses and Massage Establishments) and Section 19.60.010 have been revised to eliminate the reference to massage establishments.
2. Home Occupations. Home occupations are allowed by Section 19.42.010 as long as the use complies with certain requirements. Consistent with how the City treats other home occupations, CAMTC certified massage professionals who wish to provide massage in their homes may do so if they obtain a massage establishment permit and if they comply with Section 19.42.010. Among other requirements, the home business may not employ any persons to work on the premises and cannot generate more than three vehicle trips per day, including vehicles used by customers, vendors or delivery services. In addition to the above conditions, applicants who wish to obtain a massage establishment permit for any massage business including a home occupation must provide proof that this activity is permitted by their landlord and/or Homeowners Association (HOA), if applicable. Although concerns have been raised that some home massage businesses may engage in illegal activities, staff believes that allowing and encouraging home-based massage professionals to obtain a massage establishment permit will facilitate oversight and enforcement.

3. Additional definitions have been added to Chapter 19.12 (Definitions), Section 19.12.140 M to clarify that granting a permit for a massage establishment as a home occupation will not permit a store-front massage establishment office or clinic in a residential zone. The revision is also reflected in Table 19.18.030.

### **FISCAL IMPACT**

New associated massage establishment permit fees represent full cost recovery; therefore the fiscal impact would be negligible. A proposed resolution amending the City's FY 2015/2016 Fee Schedule is attached (Attachment 2) and summarized as follows:

1. **Massage Establishment Licenses:** The proposed changes to SMC Chapter 9.41 will require the addition of a new fee for permits issued to Massage Establishments where the owner is CAMTC Certified (Section 7.06D). Staff conducted an analysis of the current cost basis for a Massage Establishment permit (Section 7.06B) and determined that a revision of that fee is also necessary.

The proposed fee includes administrative time for processing an application, finger-printing, and background check for one owner and officer time required to perform an initial inspection of the premises plus two follow up inspections. The cost for an owner who is not CAMTC-Certified is \$1,060; if the owner is CAMTC Certified, the cost would be \$999, the difference being the cost of finger-printing and background check. The cost for each additional owner is unchanged: the current published fee is \$110.

2. **Amendment Fee:** The proposed amendment to SMC Chapter 9.41 includes a provision for notification and processing of amendments to Massage Establishment Permits that will require some staff time. A new fee is proposed that will offset the cost of this activity: Sections 7.06B and 7.06D of the proposed fee revision include the new Amendment Fee of \$30.
3. **Non-CAMTC Certified Therapist Exemption Application:** The proposed amendment to SMC Chapter 9.41 includes a provision for a massage therapist who is currently not CAMTC certified to apply for an exemption from the new certification requirements, provided certain conditions are met. A new fee is proposed to offset the cost of fingerprinting, background check, and processing an application for exemption. Section 7.06C of the proposed fee revision contains the new fee, which is \$94 per applicant.

### **PUBLIC CONTACT**

Public contact was made through posting of the City Council agenda on the City's official-notice bulletin board, a posting of the Planning Commission agenda on the City's official-notice bulletin board, on the City's website, a notice in the newspaper, and the availability of the agenda and report in the City of Sunnyvale's Public Library. Additionally, over 200 potentially affected businesses were invited to attend informational meetings on May 26 and 27. A total of twenty seven members of the community attended these meetings. The Planning Commission reviewed proposed amendments to the Zoning Code on September 14, 2015.

### **ALTERNATIVES**

1. Introduce an Ordinance Repealing and Reenacting Sunnyvale Municipal Code SMC Chapter 9.41 (Massage Establishments and Massage Therapists) of Title 9 (Public Peace Safety and Welfare) and amending Title 19 (Zoning), Sections 19.12.140 (Definitions-"M"), 19.18.030 (Table-Permitted,

Conditionally Permitted Uses in Residential Districts), and 19.60.010 (Adult Businesses) of the Sunnyvale Municipal Code.

2. Adopt a Resolution Amending Resolution 704-15, the City's Fees, Rates and Charges Resolution, pertaining to Adult Entertainment and Massage Establishments Licensing and Permitting Fees to reflect the changes in SMC Chapter 9.41.
3. Find that the project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).
4. Do not introduce the Ordinance or related changes.
5. Other actions as determined by Council.

### **RECOMMENDATION**

Alternatives 1, 2 and 3: 1) Introduce an Ordinance Repealing and Reenacting Sunnyvale Municipal Code Chapter 9.41 (Massage Establishments and Massage Therapists) of Title 9 (Public Peace Safety and Welfare) and amending Title 19 (Zoning), Sections 19.12.140 (Definitions-"M"), 19.18.030 (Table-Permitted, Conditionally Permitted Uses in Residential Districts), and 19.60.010 (Adult Businesses) of the Sunnyvale Municipal Code; 2) Adopt a Resolution Amending Resolution No. 704-15, the City's Fees, Rates and Charges Resolution, Pertaining to Adult Entertainment and Massage Establishments Licensing and Permitting Fees; and 3) Find that the project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

Staff recommends this change in order that the Sunnyvale Municipal Code be in full compliance with existing California law. Regulation of massage establishments and massage therapists provides a benefit to the community, while achieving City General Plan goals of ensuring a safe and secure environment for people and property and preserving the quality character of Sunnyvale's neighborhoods.

The Planning Commission reviewed the Title 19 (Zoning) changes on September 14, 2015 and unanimously recommended that Council adopt them.

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Reviewed by: Hanson Hom, Director, Community Development  
Reviewed by: Joan Borger, City Attorney  
Reviewed by: Kent Steffens, Assistant City Manager  
Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Draft Ordinance Amending Chapter 9.41 and Title 19 (Zoning)
2. Resolution Amending the Massage Establishment Permitting fees
3. Assembly Bill 1147 (AB 1147)