

City of Sacramento

Legislation Text

File #: 2021-00227, Version: 2

Title:

(Pass for Publication) Ordinance Amending Chapter 5.04, Deleting and Adding Chapter 5.124, and amending Sections 17.228.210, 17.408.030, and 17.409.030 of the Sacramento City Code Relating to Massage Therapy (Somatic) Practitioners and Establishments (Two-Thirds Vote Required)

File ID: 2021-00227

Location: Citywide

Recommendation:

1) Review an Ordinance amending chapter 5.04, deleting and adding chapter 5.124, and amending sections 17.228.210, 17.408.030, and 17.409.030 of the Sacramento City Code relating to massage therapy practitioners and establishments, formerly known as “somatic”; 2) pass a Motion by a two-thirds vote suspending City Council Rule 7.K.3.a, requiring that the text of the Ordinance be as approved by the Law and Legislation Committee in the published agenda; and 3) pass for publication the Ordinance title as required by Sacramento City Charter section 32(C) for consideration on April 20, 2021.

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Attachments:

- 1-Description/Analysis
- 2-Ordinance (Redline)
- 3-Ordinance (Clean)

Description/Analysis

Issue Detail: The practice and profession of massage therapy provides valuable health and therapeutic services to the public. Unless properly regulated, unlawful activity disguised as part of the profession can pose a threat to the community. The City of Sacramento (“City”) has experienced a proliferation of massage (i.e., somatic) businesses veiling prostitution and human trafficking, threatening the public’s welfare and harming legitimate providers by perpetuating stereotypes of the “massage parlor” as a source of illicit sexual activity.

Massage related activities are currently referenced in two separate sections of the Sacramento City Code (“SCC”) title 5 for business licenses. Chapter 5.04 allows massage activities as part of an adult-related establishment special business permit, and chapter 5.124 has a separate special business permit created for somatic (massage) businesses or bodywork practitioners who meet specific professional qualifications and education requirements. The City currently has zero adult entertainment massage permits issued under chapter 5.04, and 38 somatic permits (three somatic establishment permits, and 35 somatic practitioner permits) issued under chapter 5.124.

The Sacramento Police Department (“SPD”) and Community Development Department Code Enforcement Division (“Code”) have made efforts to address persistent, problematic prostitution and human trafficking violators, but have struggled with effective and lasting intervention, in part, because the current code does not require establishment permits for a business operated by a State Certified Massage Therapist and has limited operating standards, which leaves undercover enforcement actions as the only means to detect illegal activities. These coordinated efforts between SPD and Code to conduct stings are time consuming and often result only in citations or arrests of individuals on site. Little action has been successful against the illicit businesses and seldom results in closure of a location, allowing the business owner to then rotate new practitioners in and continue illicit activities.

The proposed ordinance tackles the challenges facing the City by removing reference of massage related activities from SCC chapter 5.04 for adult-related establishments and fortifying chapter 5.124 for therapeutic massage through three actions:

- Require a special business establishment permit for any person operating a massage business.
- Define operating standards.
- Wait up to two years to re-permit a location after a suspension or revocation.

Requiring a permit for all business owners will improve regulatory control and enable the City to close businesses engaging in illegal activity along with any corresponding facility. The proposed changes have limited impact on the existing massage practitioner permit, which authorizes an individual to provide massage therapy.

The operating standards in the revised chapter 5.124 ordinance will allow SPD or Code to cite business owners for violations and empower the City to suspend or revoke both establishment and practitioner permits based on violations of the standards. Specifying the permit requirements and expanding the citable offenses means action can begin without costly and time-consuming undercover police operations and will shift the responsibility and consequences from individuals to establishment owners. Each establishment permit will be subject to a biennial inspection by a Code officer who will inspect a business location for any violations to the operating standards. Examples of the new standards include:

- Adequate lighting around massage businesses
- Standards for practitioner clothing and attire
- No residing onsite
- No blocking visibility into the establishment lobby
- Retention of a registry of massage services
- No advertising in violation of City Code
- Operating hours limited to 6:00 a.m. - 10:00 p.m.
- Required posting of information about human trafficking, in alignment with California Civil Code section 52.6.

Finally, when an establishment permit is revoked, the proposed change will allow the City to prohibit another massage business from opening at the same location for up to two years following revocation. This action has been effective in other counties and cities in preventing businesses cycling through name or ownership changes while illicit activities continue at one location. According to case studies presented by the California Massage Therapy Council ("CAMTC"), these best practices have proven successful in local governments in California, including San Mateo County which closed 11 illicit establishments within four years after implementing changes.

City staff held community meetings to obtain feedback on the proposed changes from local massage practitioners and professionals who assist victims of sexual exploitation. The following summarizes the feedback received and staff's response and/or recommendation:

- Accountability: Victim advocates stressed the importance of holding business owners accountable and recommended avoiding the persecution of individual workers, who may be victims themselves.
- Permit Fees: Massage practitioners expressed concerns about additional fees related to the changes.
 - To minimize an adverse financial impact on local massage professionals, the term of an establishment and practitioner permit is increased from one to two years, and proposed permit fees are tiered whereby sole proprietors will pay less for an establishment permit than businesses with multiple employees/therapists on-site.
 - Surety bond requirements are removed from the business establishment permit provision of the code.
 - The practitioner permit rate is similar to the State permit rate.

Over the next year staff will continue outreach to the massage therapy business community including notifying members of new permit requirements and hosting community meetings to educate the

public about the new business standards.

Based on the above, staff recommends that the City Council pass the ordinance title in accordance with Sacramento City Charter section 32(C) for consideration of adoption at the following meeting.

Policy Considerations: Currently, individuals wanting to operate a massage business must either be certified by the State of California or must obtain a City somatic practitioner or establishment permit to operate in the city (SCC chapter 5.124). The City massage therapy practitioner permit is intended for individuals not certified by the state. The current establishment permit outlined in the code exempts businesses operated by certified massage therapists, requires comprehensive insurance, a surety bond, and a permit fee resulting in estimated initial cost of \$8,000 and an estimated annual cost of over \$2,000, making it cost prohibitive for small businesses. Proposed two-year business permit fees range from \$150 for an out-call only business to \$700 for a commercial business with five or more massage stations. Changes to require all massage businesses to obtain a permit, with reasonable costs and operating requirements, will provide the City regulatory control without undue hardship on legitimate businesses.

Finally, the proposed ordinance changes terminology in in SCC Chapter 17.228.210, 17.408.030, and 17.409.030, as it relates to home occupation permits and the Folsom Boulevard Special Planning Districts, from “somatic practitioner” to “massage therapy practitioner” and “somatic practitioners’ establishment” to “massage therapy establishment” to maintain consistent language.

Economic Impacts: None.

California Environmental Quality Act (CEQA): This action is not a “project” subject to CEQA because it involves administrative matters and will not result in new physical development, direct changes to the physical environment, and any reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines § 15378(b)(5).)

Sustainability: Not applicable.

Commission/Committee Action: Staff presented massage ordinance best practice findings and program options to the Law and Legislation Committee in April of 2019. The Law and Legislation Committee directed staff to return with a draft ordinance addressing the concerns and implementing proposed changes. The proposed ordinance was presented to the Law and Legislation Committee on September 1, 2020 and was forwarded to Council for consideration. The proposed Title 17 changes were approved by the Planning and Design Commission on April 8, 2021.

Rationale for Recommendation: Staff reviewed best practices from other jurisdictions throughout California and reviewed CAMTC’s recommended regulations based on successful approaches taken

in other cities across the state. Upon observation and request by the SPD, City Attorney's Office, City Manager's Office, Finance Department, Code, and the Law and Legislation Committee, staff has drafted ordinance amendments necessary to protect the community from the illegal activities of businesses acting as legitimate massage establishments. Changes to Chapter 5.04 and section 17.228.210 maintain language consistency and ensure the policy and practice align with the SCC.

Staff will propose fees to cover the estimated cost to review applications, perform administrative processing of the applications, determine approval of the permit, and for Code Enforcement to conduct one location inspection for each permit term (every two years).

Financial Considerations: Staff will return to Council with a Resolution wherein permit fees will be established to offset the estimated operating costs to implement the program including biennial site inspection. Staff will evaluate the fee revenue and associated service level costs in future years according to the City procedures for fees and charges.

No provision will be included in the fee structure for violation investigation or enforcement activities. Administrative penalties may be levied for violations and the resulting revenue is intended to be the sole funding source for violation investigation and enforcement costs. Practitioners and businesses in violation of the proposed ordinance may be subject to administrative penalties ranging from \$250 to \$25,000 for each day of violation, however enforcement actions do not necessarily result in realizable revenue, so staff will also monitor the net resource flow of enforcement to identify whether a surplus might develop that could provide support for additional program outreach or activities.

Local Business Enterprise (LBE): Not applicable.