



Legislation Text

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Staff report for an ordinance amending San Leandro Municipal Code Chapter 4.23 to repeal provisions related to the regulation of acupuncturists and to regulate the operation of massage establishments; and to repeal the ordinance establishing a moratorium on massage related land uses.

RECOMMENDATIONS

Staff recommends that the City Council adopt the attached Ordinance amending San Leandro Municipal Code Chapter 4.23 to repeal provisions related to the regulation of acupuncturists and to regulate the operation of massage establishments; and to repeal the ordinance establishing a moratorium on massage related land uses.

BACKGROUND AND SUMMARY

In 2009, the California Legislature adopted Senate Bill 731 ("SB 731"), which added the Massage Therapy Act into state law. The Massage Therapy Act effectively eliminated local zoning authority over massage establishments and limited the City of San Leandro's ability to regulate massage establishments through business licensing, zoning, and health, safety, and welfare regulations. As a result, staff stopped enforcing provisions of the City's Zoning Code and Municipal Code that were inconsistent with SB 731.

Prior to the effective date of the Massage Therapy Act, San Leandro had 11 establishments. After the passage of the Massage Therapy Act in 2009, the number of massage establishments in the City increased to approximately 45. The noticeable increase in establishments was similar to other cities in Alameda County. Like San Leandro, cities throughout California received numerous complaints regarding illicit activity at massage establishments, including prostitution and human trafficking. Because of increased complaints, the Police Department diverted significant public safety resources to investigate complaints of illicit activity at numerous massage establishments. In San Leandro, one massage establishment, with a history of multiple offenses for prostitution since 2011, was shut down as part of a county-wide sting operation. Another massage establishment in San Leandro had its business license revoked because of prostitution activities.

In 2014, the Governor signed Assembly Bill 1147 ("AB 1147") into law, which became effective January 1, 2015. AB 1147 amended state law to return zoning and business licensing authority over massage establishments to cities. In October 2014, the City Council adopted, and later extended, a temporary moratorium to prohibit the relocation and establishment of new and existing massage establishments pending effective changes in state law. At the time the City Council adopted the moratorium on the establishment and relocation of new and existing massage establishments, the City revoked the business license of one massage establishment for solicitation of prostitution. In October 2015, the City Council extended the temporary moratorium a second and final time to allow

the City additional time to study and conduct community outreach to determine how best to regulate massage establishments. The moratorium expires on October 20, 2016.

Since the City Council established and extended the temporary moratorium on the establishment and relocation of massage establishments, staff has prepared amendments to the Municipal Code to update performance standards for massage establishments. San Leandro Municipal Code Chapter 4.23, "Massage and Acupuncture Establishments and Services," is outdated and includes provisions regulating acupuncturists throughout the City. Local regulations regarding acupuncturists are no longer required because state law comprehensively regulates acupuncture. The proposed amendments repeal and replace San Leandro Municipal Code Chapter 4.23 in its entirety to eliminate provisions regulating acupuncturists and to regulate massage establishments consistent with state law.

While AB 1147 amended state law to return significant regulatory authority over massage establishments to cities, there are still some limitations on the City's ability to regulate massage establishments. For example, cities cannot prohibit an establishment from locking its external doors if the massage establishment is owned by one individual with one or no employees or independent contractors; impose a dress code requirement on California Massage Therapy Council (CAMTC) certified massage technicians that exceed the dress code requirement delineated under state law; or prohibit specific massage techniques recognized by CAMTC as legitimate. Following review, staff has made proposed amendments to Chapter 4.23 to ensure consistency with state law and to adopt procedures and requirements that were previously banned under the 2009 Massage Therapy Act.

The main provisions of the proposed Ordinance are as follows:

- Eliminates the requirement that CAMTC certified massage technicians register with the City and adds the requirement that massage establishment operators maintain an updated list of CAMTC certified massage technicians with the City.
- Requires all massage establishment operators to obtain an operator permit. Applicants must undergo a background check including: inquiry into whether the applicant was required to register as a sex offender; inquiry into whether the applicant had been convicted of a felony; and the applicant's employment history within the past five years. These amendments permit the City to recoup its costs with an application fee from all massage establishment operators.
- The City may deny a massage establishment operator permit for any applicant that has been convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude within five years of the application.
- Makes it illegal for massage establishments to employ massage technicians that have had their CAMTC certifications revoked; makes it illegal for massage establishments to engage in sexually suggestive advertising; and requires massage establishment operators to notify CAMTC of any certified massage technicians that violate the Massage Therapy Act.
- Requires all individuals practicing massage in the City to obtain state certification. Allows existing massage technicians to operate pursuant to a masseuse permit issued by the City until December 1, 2016, at which point the massage therapist will have to obtain state

certification.

- Sets operational requirements for massage establishments including: setting hours of operation; minimum clothing requirements for patrons and visitors; advertising limitations; and requiring visibility into the front reception area of establishments.
- Sets health and safety requirements for massage establishments including: requiring towels and linens to be properly sanitized; prohibiting invasive procedures; requiring proper draping of patrons during massage; and prohibiting alcohol on the premises of a massage establishment.
- Operator permits are valid for three years and can be renewed for subsequent three year terms. Operators with an existing massage establishment permit or those who are previously exempt from obtaining a permit under state law will receive an operator permit and be required to renew the permit on the date that the existing permit would have expired.
- Includes provisions for the City to revoke or suspend operator permits including provisions for immediate interim suspension upon determining that the suspension is necessary to protect public health, safety or welfare.

The proposed changes to Chapter 4.23 are intended to strengthen the City's standards for massage businesses to the extent allowed by state law. The Ordinance repeals the existing moratorium upon the effective date of the Ordinance.

The City held two community meetings - on August 25th and October 22, 2015 - with massage establishment owners in order to solicit input and receive feedback on the proposed amendments. The meetings included translation services and did not result in any objections from existing massage establishment providers that attended.

ATTACHMENTS

None.

PREPARED BY: Richard Pio Roda, City Attorney