

REPORT TO THE CITY COUNCIL

City of Salinas, California

DATE: May 12, 2015

FROM: Christopher A. Callihan, City Attorney

BY: Katherine M. Hogan, Sr. Deputy City Attorney

SUBJECT: **REGULATION ON BUSINESS OF MASSAGE**

RECOMMENDATION:

It is recommended that the City Council introduce and then subsequently adopt an ordinance repealing and replacing Salinas City Code Chapter 16A to bring the City's regulations on the business of massage into conformance with California law.

DISCUSSION:

In 2008, the California State Legislature passed Senate Bill 731, which shifted regulatory control over the business of massage from local government to a nonprofit organization called the Massage Therapy Organization.

In 2011, the Legislature adopted Assembly Bill 619, which created the California Massage Therapy Council ("CMTC") to oversee voluntary statewide certification of massage therapists. AB 619 also included consumer protection measures, such as requirements for certificate holders to identify themselves in advertising and display their certificates at their businesses.

In 2012, Senate Bill 1238 clarified the CMTC's authority to deny or suspend certification, added requirements for certification, and authorized law enforcement and CMTC to share information related to criminal activity and unprofessional conduct.

The Legislature recently passed the Massage Therapy Act, Assembly Bill 1147, which became effective on January 1, 2015. AB 1147 further defines the distinction between statewide certification of massage therapists and local regulation of massage businesses. Previous law stated a city could regulate the business of massage to the extent it uniformly applied its regulations to other businesses that provide professional services. This limited a city's ability to regulate an industry that can be susceptible to criminal activity, including prostitution and human trafficking. AB 1147 lifted the uniformity requirement, and largely restored control to local government for matters not involving CMTC certification, such as zoning and business licensing, although local government may not regulate the business of massage as adult entertainment. Remaining limits on local control are meant to raise the dignity of the massage profession and allow for consistent statewide certification of massage therapists by CMTC. A city may not enact or enforce an ordinance that conflicts with these limits.

ISSUE:

Shall the City Council introduce and subsequently adopt an ordinance repealing and replacing Chapter 16A of the Salinas City Code regarding the regulation of the business of massage within the City so as to bring the City Code into conformance with California law?

FISCAL IMPACT:

It is anticipated there will be minimal impact on the City's General Fund.

TIME CONSIDERATIONS:

There are no time considerations applicable to the City Council's consideration of this item, other than the need to bring the City Code into conformance with current state law. The City Council is being asked to introduce the proposed ordinance on May 12, 2015, and then adopt the proposed ordinance on May 26, 2015. The ordinance would become effective thirty (30) days following the adoption on June 25, 2015.

CEQA CONSIDERATIONS:

CEQA Guidelines section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA review. Because the City Council's adoption of the proposed ordinance has no potential to cause any effect on the environment, this matter is not a project. Because adoption of the proposed ordinance does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

ALTERNATIVES:

The City Council may:

1. request additional information;
2. choose not to amend Salinas City Code Chapter 16A; or
3. otherwise direct staff how to proceed.

CITY COUNCIL GOALS:

This action supports the City Council's goal of protecting the health and safety of the City's residents and the Quality of Life for the community by ensuring that the business of massage within the City meets statewide standards for massage professionals and fits with local priorities for land use and business licensing.

CONCLUSIONS:

Currently, the City's regulations and procedures applicable to the business of massage are inconsistent with the limitations imposed by state law. The California legislature continues to assume regulatory authority over certification for massage professionals. The proposed ordinance is intended to update the Salinas City Code to bring it into consistency with California law.

Distribution:
City Council
City Manager
City Attorney
Department Directors

Attachments:
Proposed Ordinance