



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** August 26, 2010

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**COUNCIL DISTRICT:** Citywide  
**SNI AREA:** All

**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 20.200.740 OF CHAPTER 20.200 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THE DEFINITION OF A MASSAGE PARLOR USE TO NOT INCLUDE STATE-CERTIFIED MASSAGE THERAPISTS OR PRACTITIONERS.**

## RECOMMENDATION

The Planning Commission voted 6-0-1 (Commissioner Kamkar absent) to recommend that the City Council approve an ordinance amending Title 20 of the San José Municipal Code to revise the definition of massage parlor use to not include state-certified massage therapists or practitioners.

## OUTCOME

The proposed ordinance would clarify that massage establishments where massage is administered exclusively by state-certified massage therapists or practitioners is subject to the requirements applicable to any "personal service" use. As result, massage establishments that utilize only state-certified massage therapists and practitioners will be able to locate in the Downtown Zoning Districts and more broadly in Commercial Zoning Districts citywide.

## BACKGROUND

On August 25, 2010, the Planning Commission conducted a public hearing on the proposed ordinance. See attached staff report for a detailed description of the proposed ordinance.

## ANALYSIS

Staff made a brief presentation regarding the proposed ordinance. The Chairperson of the Massage Therapy Council (MTC) and a certified massage therapist spoke in favor of the ordinance. They indicated that the MTC certification process protects the public by establishing a fair and consistent regulatory process that provides standards for massage therapists and practitioners and enables

customers to easily identify credible massage professionals. Commissioner Bit-Badal acknowledged the importance of certified massage therapists.

The Commission voted to recommend that the City Council approve the ordinance.

### **EVALUATION AND FOLLOW-UP**

If the proposed ordinance is approved by the City Council, staff will be revising the Zoning Verification process administered by the Permit Center to include verification of those massage establishments where massage is administered exclusively by certified massage therapists or practitioners.

### **POLICY ALTERNATIVES**

Not applicable.

### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the Post Record and emailed to a list of interested groups and individuals. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

### **COORDINATION**

This project was coordinated with the City Attorney's Office and the Police Department.

### **FISCAL/POLICY ALIGNMENT**

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

August 26, 2010

**Subject: Proposed Massage Ordinance**

Page 3

**COST SUMMARY/IMPLICATIONS**

Not applicable.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

Use of the San Jose 2020 General Plan Environmental Impact Report, Resolution 65459, File No. PP10-140.

/s/

JOSEPH HORWEDEL, SECRETARY  
Planning Commission

For questions please contact Carol Hamilton at 408-535-7837.

Attachment



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** August 16, 2010

**COUNCIL DISTRICT:** Citywide  
**SNI AREAS:** All

**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 20.200.740 OF CHAPTER 20.200 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THE DEFINITION OF A MASSAGE PARLOR TO NOT INCLUDE STATE-CERTIFIED MASSAGE THERAPISTS OR PRACTITIONERS.**

## RECOMMENDATION

Planning staff recommends that the Planning Commission recommend to the City Council the approval of an ordinance amending Title 20 of the San José Municipal Code to amend Section 20.200.740 of Chapter 20.200 to clarify the definition of massage parlor to exclude state-certified massage therapists or practitioners.

## OUTCOME

The proposed ordinance would clarify that massage administered exclusively by state-certified massage therapists or practitioners is subject to the requirements applicable to any "personal service" use. As result, massage establishments that utilize only state-certified massage therapists and practitioners will be able to locate in the Downtown Zoning Districts and more broadly in Commercial Zoning Districts citywide.

## BACKGROUND

State Bill 731, which became effective in September 2009, established a state certification process for massage therapists and practitioners. The legislation authorized the creation of a non-profit organization to administer the certification process (now in existence as the California Massage

Therapy Council); established minimum educational standards for certified massage practitioners and more rigorous standards for certified massage therapists; provided for finger printing and background checks of certification candidates; established a framework for disciplining certificate holders; and provided for communication between local law enforcement agencies and the certifying organization. The California Massage Therapy Council is now certifying massage therapists and practitioners pursuant to SB 731.

Since persons who undergo and complete the state certification process have undergone background checks and fingerprinting, and have met certain minimum educational requirements in their field, a state certification provides some assurance of competency and credibility in the lawful practice of massage therapies. For this reason, state law provides that businesses where only state-certified persons administer massage shall be treated as other similar personal services uses from a land use and zoning standpoint.

## ANALYSIS

### Current Zoning Regulations

The Zoning Ordinance defines "Massage Parlor" as follows:

*"Massage parlor" is a building or portion thereof or a place where massage is administered for compensation or from which a massage business or service for compensation is operated. "Massage parlor" does not include establishments where massage is administered in conjunction with: a) the practice of a medical doctor, chiropractor, dentist, osteopath, physical therapist or registered nurse; b) a state-approved massage school; or c) an athletic club or a full-service barber or beauty salon where not more than fifteen percent (15%) of floor space is used for massage activity. For purpose of this definition, a full service barber must at a minimum provide hair styling, including shampoos, and shave services; and a full service beauty salon must at a minimum provide services for hair styling, including shampoos, and facials. (Section 20.200.740 of Title 20)*

The Specific Use Regulations (beginning with Section 20.80.20) prohibit Massage Parlors in the Downtown Core Area; allow them outside the Downtown Core only in the CG Commercial General Zoning District (or in a Planned Development District that allows uses of the CG District); and require that a massage parlor be located no closer than 200 feet from any residentially zoned property or from any other massage parlor or adult use and 500 feet from any school. Massage parlors located within a major shopping center which meets specific parameters are not subject to the separation requirements identified above. Massage that is currently excluded from the "massage parlor" definition (including massage in conjunction with a medical practice, a state certified massage school, or as 15% or less of the floor area of an athletic club or a full-service beauty salon or barber shop), is not governed by the massage parlor regulations but is subject to the zoning regulations applicable to the primary use with which the massage is associated.

### Proposed Ordinance

The proposed ordinance clarifies that the following additional category of massage establishment is not a "massage parlor" and is not subject to the massage parlor requirements:

*"Establishments where massage is administered only by persons who each possess a current, active and valid certificate issued pursuant to Chapter 10.5 of Division 2 of the*

*California Business and Professions Code and copies of all such certificates have been provided to the Director, . . ."*

This means that establishments where only state-certified persons administer massage are classified as "personal service" uses that are allowed by right in all of the Downtown Zoning Districts and all other Commercial Zoning Districts except the CO Commercial Office District. The proposed ordinance includes a requirement that massage establishments submit copies of certification for each person administering massage to allow the City to identify those massage establishments that are not subject to the requirements applicable to "massage parlors." Records regarding state certification will be reviewed and confirmed through the Zoning Verification process.

### Conclusion

The proposed ordinance will bring the Zoning Ordinance into alignment with how the state provides that massage administered by state-certified massage therapists or practitioners should be treated: as a personal service use.

### EVALUATION AND FOLLOW-UP

If the proposed ordinance is approved by the City Council, staff will be revising the Zoning Verification process administered by the Permit Center to include verification of those massage establishments where massage is administered exclusively by certified massage therapists or practitioners.

### PUBLIC OUTREACH

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hear dates was published in the Post Record and emailed to a list of interested groups and individuals. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

### COORDINATION

The preparation of the proposed ordinance and this staff report have been coordinated with the City Attorney's Office, the Redevelopment Agency and the Police Department.

PLANNING COMMISSION  
August 16, 2010  
**Subject: Proposed Massage Ordinance**  
Page 4

CEQA

Use of the San Jose 2020 General Plan Environmental Impact Report, Resolution 65459. File No. PP10-140.

  
JOSEPH HORWEDEL, Director  
Department of Planning, Building and Code Enforcement

For more information please call Carol Hamilton at (408) 535-7837.

Attachment: Draft Ordinance