

**CITY OF CYPRESS
AGENDA REPORT**

Item # **3**

TO: Peter Grant, City Manager
FROM: Anthony R. Taylor, City Attorney
MEETING OF: April 11, 2016
**SUBJECT: Amending Portions of Cypress Municipal Code Chapter 15A,
Massage Establishments**

RECOMMENDATION

The City Attorney's Office recommends the City Council approve amendments to portions of Cypress Municipal Code Chapter 15A, Massage Establishments (the "Amended Ordinance").

The Amended Ordinance clarifies the City of Cypress's requirements for Massage Establishments and the licensing requirements or exemptions for massage therapists certified by the California Massage Therapy Council ("CAMTC").

BACKGROUND

The City has been regulating massage establishments since 1971. The City's ordinance has changed as State law has taken a more active role in regulating the business of massage.

In 2008, the State signed into law the Massage Therapy Law, creating a statewide system for issuing massage worker permits and shifted government regulation from local governments to the CAMTC. The Massage Therapy law preempted most local land use, zoning and operational regulations relating to massage therapists and practitioners certified by the CAMTC and massage establishments that exclusively employ certified massage therapists and practitioners.

Recently, the law changed to allow more local regulation by authorizing the City to adopt and enforce zoning regulations specific to massage establishments that do not necessarily apply to all other licensed professionals.

ANALYSIS

The City Attorney's Office has drafted an ordinance to amend portions of Chapter 15A, Massage Establishments, of the Cypress Municipal Code to ensure the future health, safety, and general welfare of the City's citizens.

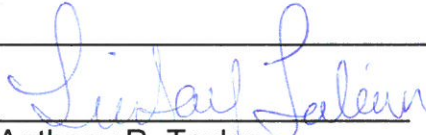

The Amended Ordinance ensures CAMTC therapists are regulated to the greatest extent possible by requiring Massage Establishment Licenses. The ordinance also clarifies that CAMTC therapists, which are already heavily regulated by the State's system, are not required to obtain duplicative city licenses and permits. Non-CAMTC therapists will continue to be regulated as before and are required to obtain the same City licenses and permits as they had before this amendment.

FISCAL IMPACT

None anticipated.

LEGAL REVIEW

The City Attorney prepared this staff report and the draft ordinance.

By:  Anthony R. Taylor City Attorney	 Peter Grant City Manager
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Attachment: Ordinance Amending Portions of Cypress Municipal Code Chapter 15A,
Massage Establishments

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CYPRESS,
CALIFORNIA, AMENDING PORTIONS OF CHAPTER 15A OF THE
CYPRESS MUNICIPAL CODE**

WHEREAS, the City of Cypress (the "City") duly enacted on June 9, 1997, Ord. No. 967, § 1 which amended Ch. 15A in its entirety. Prior to amendment, Ch. 15A pertained to massage parlors and derived from Ord. No. 455, § 1, adopted July 12, 1971; and

WHEREAS, the City Council now deems it appropriate to amend Cypress Municipal Code, Chapter 15A, Massage Establishments, to ensure the future health, safety, and general welfare of the citizens; and

WHEREAS, in 2008, the California State Legislature adopted and the Governor signed into law, Senate Bill 731, which established uniform statewide regulations pertaining to massage therapy and massage establishments (Business and Professions Code Section 4600 et seq.) (hereinafter, the "Massage Therapy Law"). The Massage Therapy Law created a statewide system for issuing massage worker permits and shifted government regulation from local governments to a new state entity known as the California Massage Therapy Council (hereinafter, the "CAMTC"). The Massage Therapy Law preempted most local land use, zoning and operational regulations relating to massage therapists and practitioners certified by the CAMTC and massage establishments that exclusively employ certified massage therapists and practitioners; and

WHEREAS, the State Legislature adopted Assembly Bill 619 in 2011 and Senate Bill 1238 in 2012, which amended various provisions of the Massage Therapy Law to further limit local government authority to regulate massage; and

WHEREAS, many Southern California cities saw a proliferation of massage establishments after the passage of the Massage Therapy Law took effect, which was due in part to the permissive zoning regulations required under the Massage Therapy Law. There is evidence in other jurisdictions that massage establishments serve as fronts for prostitution or human sex trafficking. The potential for criminal and unsafe activities at massage establishments is particularly concerning given that some are located within proximity to places where families congregate, such as restaurants and shopping areas; and

WHEREAS, on September 18, 2014, Governor Brown signed into law Assembly Bill 1147 (hereinafter, "AB 1147"), which amended the Massage Therapy Law to expand local authority to adopt zoning ordinances to regulate massage establishments run by CAMTC certified massage therapists. The City now has the ability to adopt and enforce zoning regulations specific to massage establishments that do not necessarily apply to all other licensed professionals. AB 1147 took effect on January 1, 2015; and

WHEREAS, one of the Legislature's intents is "that broad control over land use in regulating massage establishments be vested in local governments so that they may manage those establishments in the best interests of the individual community, and that the requirements and practice of the profession of massage therapy remain a matter of statewide concern, regulation, and oversight." (California Business and Professional Code Section 4600.5.); and

WHEREAS, AB 1147 did not change the City's ability to regulate message therapists who do not have a CAMTC certificate, but it did expand the City's ability to regulate CAMTC certified massage therapists; and

WHEREAS, California Business and Professional Code Section 4612 limits the City's ability to enact or enforce an ordinance that conflicts with this chapter or Section 51034 of the Government Code, but nothing in this chapter prevents the City from licensing, regulating, prohibiting, or permitting an individual who provides massage for compensation without a valid certificate; and

WHEREAS, Government Code Section 51034 prohibits the City from "Impos[ing] a requirement that an individual holding a certificate issued in accordance with Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, obtain any other license, permit, certificate, or other authorization to provide massage for compensation. However, this paragraph shall not be construed to prohibit a city, county, or city and county from requiring by ordinance that a massage business or establishment obtain a license, permit, certificate, or other authorization in order to operate lawfully within the jurisdiction."; and

WHEREAS, the City Council recognizes the value of allowing massage businesses, and Council also recognize the continued need to regulate these businesses to lessen the risk of injury to massage clients who may be injured by improperly trained and or uneducated massage therapists, and to lessen the risk of prostitution and/or human sex trafficking.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CYPRESS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Cypress Municipal Code Chapter 15A-1 Findings and purpose is amended to add subsection (h) to read:

"To the fullest extent of the law, the City requires owners and operators who are CAMTC certified to obtain operation licenses within its jurisdiction."

Section 2. Cypress Municipal Code, Chapter 15A-2: Definitions is amended to add the following subsections which will be placed at the start of the section as the new subsections (a) and (b) (the other definitions will remain only to be placed sequentially behind the new subsections):

"(a) *California Massage Therapy Council* (CAMTC) shall mean the State organized non-profit organization created to regulate the massage industry set forth in Chapter 10.5 of Division 2 of the Business and Professions Code of the State (commencing with Section 4600).

(b) *CAMTC certificate* shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage technician."

Section 3. Cypress Municipal Code Chapter 15A-22: Exemptions is deleted in its entirety and amended to read:

"(a) This chapter shall not apply to the following:

(1) State-licensed professionals while engaged in the performance of the duties of their respective professions and while limited to the scope of their California state licenses including acupuncturists, aestheticians, barbers, chiropractors, cosmetologists, exercise physiologists, manicurists, nurses, naturopathic doctors, occupational therapists, osteopaths, physical therapists, physicians, and surgeons.

(2) Trainers of any semiprofessional or professional athlete or athletic team, or athletic trainers hired by a local, state or federal government agency.

(3) Any educational institution regulated by the State of California, including any portion of the institution providing massage services, such as student clinics and work study programs, regulated under such state license.

(4) Individuals administering massages or health treatment involving massage to persons participating in road races, track meets, triathlons and similar single occurrence athletic or recreational events; provided, that all of the following conditions are met:

- a. The massage services are made equally available to all participants in the event.
- b. The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations.
- c. The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event.
- d. The sponsors of the event have been advised of and have approved the provision of massage services.
- e. The persons providing the massage services are not the primary sponsors of the event.

(b) CAMTC certified massage technicians and/or practitioners are exempt from the following:

- (1) Subsections (d) and (p) of Sec. 15A-7. Massage establishment facilities and operations requirements.

Subsection (l) of Sec. 15A-7. does not limit a CAMTC technician or practitioner from "performing massage for compensation on the gluteal muscles, prohibit specific massage techniques recognized by the California Massage Therapy Council as legitimate, or impose any other specific restriction on professional practice beyond those set forth in subparagraph (E) of paragraph (1) of subdivision (a) of Section 4609 of the Business and Professions Code, except as authorized by Section 460 of the Business and Professions Code." (Gov. Code, § 51034.)

- (2) Sec. 15A-15. Massage technician permit requirement.
- (3) Sec. 15A-16. Massage technician application fee and renewals
- (4) Sec 15A-17. Application for massage technician permit
- (5) Sec 15A-18. Massage practitioner permit required.
- (6) Sec 15A-19. Massage practitioner application fee and renewal.
- (7) Sec 15A-20. Application for massage practitioner permit.

Section 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Cypress hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

Section 5. This Ordinance shall be in full force and effect thirty (30) days after its passage.

Section 6. The City Clerk shall certify to the passage and adoption of this Ordinance by the City Council of the City of Cypress and shall cause a summary of this ordinance to be published in accordance with Government Code § 36933.

FIRST READING at a regular meeting of the City Council of said City held on the 11th day of April 2016, and finally adopted and order posted at a regular meeting held on the ___ day of April, 2016.

MAYOR OF THE CITY OF CYPRESS

ATTEST:

CITY CLERK OF THE CITY OF CYPRESS

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS

I, DENISE BASHAM, City Clerk of the City of Cypress, DO HEREBY CERTIFY THAT THE FOREGOING Ordinance was duly adopted by said City Council at a regular meeting held on the ___ day of April, 2016, by the following roll call vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS
ABSENT: COUNCIL MEMBERS

CITY CLERK OF THE CITY OF CYPRESS