REPORT TO COUNCIL 36
City of Sacramento

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Staff Report
May 22, 2007

Honorable Mayor and
Members of the City Council

Title: Somatic Practitioners Establishments

Location/Council District: Citywide

Recommendation: 1) Adopt a **Resolution** establishing fees for the somatic practitioner establishment permit; 2) Adopt an **Ordinance** amending Sections 124.010, 5.124.020, 5.124.030 and 5.124.100 and adding Sections 5.124.140, 5.124.150, 5.124.160 and 5.124.170 of Chapter 5.124 of the Sacramento City Code regarding Somatic Practitioner's Establishments.

Contact: Brad Wasson, Revenue Manager, 808-5724

Presenters: Brad Wasson, Revenue Manager, 808-5724

Department: Finance

Division: Revenue

Organization No: 1121

Description/Analysis

Issue: On February 6, 2007, Council Member Steve Cohn requested that staff amend the City Code to allow different business models to conduct massage based on recent trends in the industry. Specifically, Council Member Cohn requested that the number of somatic practitioners per location be reviewed because of the different business models.

The City's somatic practitioner ordinance was crafted to allow independent massage therapists to practice massage if they met stringent education and back-ground requirements. To date, this permitting process has worked well for the practitioners as well as City officials. However, somatic practitioners have now expressed interest in working as employees for salons and other such establishments, which is problematic under current City Code.

Policy Considerations: The somatic practitioner permit and the proposed establishment permit are alternatives to the adult related establishment permit. To accommodate the changing business environment, staff is proposing the creation of a somatic practitioner establishment permit to hold business owners responsible for massage services conducted at their place of business by

somatic practitioners who are hired as employees. The proposed ordinance would not replace the adult related restrictions on these types of permits. Adequate controls will be maintained to ensure that illicit activities do not occur at the establishments.

Environmental Considerations: Pursuant to Section 15378(b) (3), this is not a project under the California Environmental Quality Act.

Commission/Committee Action: On April 17, 2007, the Law and Legislation Committee heard this item and unanimously forwarded it to the Mayor and City Council for consideration. The Committee also asked staff to review special planning districts and consult individual Council Members regarding potentially excluding this new permit type as an allowable use. The Committee also asked staff to report back regarding a request from some somatic practitioners to change the City Code to allow them to perform massages on clients in the practitioner's homes. Additionally, the Committee requested a report back on the County of Sacramento's enforcement efforts regarding massage establishments.

Rationale for Recommendation: Staff recommends that the Mayor and City Council adopt the proposed amendment to this ordinance. The current somatic practitioner permit process has worked very well for practitioners, City staff and the citizens it protects. It has created a level of accountability that has prevented illicit massage activity within the City limits. The proposed somatic establishment permit builds upon the accountability developed with the practitioner permit, but places additional accountability on business owners. Citizens want therapeutic massage and expect the City to regulate the practitioners and businesses that provide this service.

Financial Considerations: The somatic practitioner establishment permit application process will be similar to the City's entertainment permit process. Consequently, the recommended fee is the same at $756.00 for a new permit application, and $103.00 for a renewal application. Based on expected volume, this should generate approximately $5,000.00 annually to the General Fund.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: Brad Wasson

Brad Wasson, Revenue Manager

Approved by: Russell Fehr

Russell Fehr, Finance Manager

Recommendation Approved:

for Ray Kerridge
City Manager

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Background:

The Mayor and City Council adopted the current somatic practitioner permit City Code Section 5.124 in 1998. City staff worked with stakeholders for three years to develop an ordinance that would ensure individual therapists are trained and educated in therapeutic massage. The permit process has worked extremely well. In the nine years administering the program, the City has never revoked a somatic practitioner permit for criminal activity. As of March 2007, 192 valid somatic practitioner permits had been issued.

When this permit process was developed, staff focused on the individual practitioner and accountability was tied to them directly. The business model assumed the practitioner would lease space, go to client's locations, or work as a contractor for a business. Individual practitioners and salon owners have contacted City staff to allow salon owners to hire somatic practitioners as employees and the salon would offer massage services and arrange for the somatic practitioner's massage appointments. Workers' compensation issues have made it difficult for the practitioners to operate as independent contractors in a salon environment because the owner directs their working hours and customer assignments.

The City has not allowed somatic practitioners to perform massage at a business establishment that offers massage services unless the business owner also has a somatic practitioner permit. If the business owner has a somatic permit, then they have completed a background check and demonstrated a commitment to therapeutic massage by meeting the training and educational requirements. Also, under the current City Code, no more than 10 somatic practitioners can work at the same location.

On February 6, 2007, Council Member Steve Cohn requested staff analyze this issue and provide a recommendation to the Law and Legislative Committee allowing different business models to conduct massage based on recent trends in the industry. Specifically, Council Member Cohn requested that the number of somatic practitioners per location be reviewed because of the different business models.

To accommodate this changing business environment, staff is proposing the creation of a somatic practitioner establishment permit to hold business owners responsible for massage services conducted at their place of business by somatic practitioners who are hired as employees. The somatic practitioner employees working at an establishment would still be required to obtain an individual practitioner permit. Consequently, if illegal activity were to occur at the establishment by a practitioner, both the business owner and practitioner would be held accountable. Police Department staff has reviewed the proposed ordinance and support staff's recommendations.

The major components of the proposed somatic establishment permit are listed below:

- The business owners will apply to the Department of Finance and a complete background check will be performed by the Police Department consistent with the current practice for practitioners.

- The location must comply with all applicable codes, which will trigger recommendations from building, zoning and fire code administrators.
- Individual somatic practitioners must designate in writing that the establishment location and name of business is where they will conduct massage.
- All massages arranged or conducted through the business must be performed at the location indicated on the permit.
- No more than 15 somatic practitioners can conduct massage at any one establishment at the same time.
- The number of somatic practitioners that can designate an establishment as the business location they perform massage is unlimited.
- The business must maintain $1,000,000 of general liability insurance with an automatic permit revocation component should the insurance lapse or be canceled.
- The business must maintain a log with the names of clients that received massage which can be inspected by enforcement officials.
- The business is prohibited from installing devices that monitors whether clients possess surveillance equipment which could hamper law enforcement investigations.

Violations of the somatic practitioner and/or somatic practitioner establishment permits may result in a combination of consequences, depending on the severity of the violation. Minor administrative violations may result in a warning or an administrative penalty. More serious violations, such as operating without a permit or insurance, may result in an administrative penalty and/or permit suspension or revocation. Criminal activity may result in penal code prosecution and/or permit suspension/revocation along with an administrative penalty.

Should the City need to suspend, revoke or deny a somatic practitioner establishment permit, the permitee will have 10 days to file an appeal. This is the same due process that is established for most of the City's business permits.

Staff conducted a stakeholder meeting on Monday, March 19, 2007. There was general agreement on the establishment permit proposal, except for the proposed requirement that the somatic employees could only practice at the business location and could not perform massages offsite. Law enforcement is concerned about the ability to hold the establishment permit holder accountable for massages not conducted on the premises. Staff reviewed this concern and modified the restriction so that the practitioner could not perform massage offsite in connection with the clients of the establishment. Therefore, a somatic practitioner could work both as an employee of an establishment, as well as provide massage services at another location as an independent contractor, as long as such "independent" services at another location were not arranged by the establishment.

The stakeholders also requested a change to the current restriction which prohibits clients from going to the practitioner's home for massages. On April 17, 2007, the Law

and Legislative Committee directed staff to look into this matter separately and report back. The Committee also requested a report back regarding Sacramento County's massage permitting and enforcement efforts. Staff is researching these items including outreach to neighborhood associations and will report back to the Committee within 90 days.

The Law and Legislative Committee was also concerned about somatic practitioner establishments in special planning districts. The special planning districts can be modified to exclude this new type of permit. This would require a change to Title 17 of the City Code which must go before the Planning Commission. The Law and Legislative committee directed staff to research all of the special planning districts and consult with appropriate Council Members whose district they are in as to whether the somatic practitioner establishments should be an allowable use in a particular special planning district.

RESOLUTION NO.

Adopted by the Sacramento City Council

ESTABLISHING THE SOMATIC PRACTITIONER ESTABLISHMENT PERMIT FEE

BACKGROUND

A. On April 17, 2007, the Law and Legislation Committee approved and forwarded to the Mayor and the City Council for consideration an ordinance to create the somatic practitioner establishment permit, which would allow a business to hire somatic practitioners as employees and to operate with more than the current limitation of 10 practitioners.

B. Implementation and enforcement of the amended somatic practitioner ordinance results in additional staff costs.

C. Fees will be used to offset the costs to administer and enforce the somatic practitioner program.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City of Sacramento Fee and Charge Report is amended to include the following fees:

Somatic Practitioner Establishment Permit
Application: $ 756.00
Renewal: $103.00

Section 2. Based on information presented in the public record and in compliance with the Public Resources Code Section 21080(b)(8), the City Council finds that the permit fees are for the purpose of meeting operating expenses, including employee wage rates and fringe benefits.

Section 3. Authorize the City Manager to adjust department operating and revenue budgets to reflect the somatic practitioner establishment permit processing costs and revenues.

ORDINANCE NO. _____

Adopted by the Sacramento City Council

_____

AMENDING SECTIONS 5.124.010, 5.124.020, 5.124.030 AND 5.124.100 AND ADDING SECTIONS 5.124.140, 5.124.150, 5.124.160 AND 5.124.170 OF CHAPTER 5.124 OF THE SACRAMENTO CITY CODE REGARDING SOMATIC PRACTITIONERS' ESTABLISHMENTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. The title of Chapter 5.124 of the Sacramento City Code is amended to read as follows:

Chapter 5.124 SOMATIC PRACTITIONERS AND ESTABLISHMENTS ALTERNATIVE PERMIT PROCESS

SECTION 2. Section 5.124.010 of the Sacramento City Code is amended to read as follows:

5.124.010. Applicability of chapter.

This chapter shall provide an alternative permit issuance process for massage technicians and massage establishments (that would otherwise be regulated pursuant to Chapter 5.04 if this title) that meet all of the qualifications and comply with all of the restrictions set forth in this chapter. A massage technician who obtains a permit under this chapter shall be referred to as a somatic practitioner. A massage establishment that obtains a permit under this chapter shall be referred to as a somatic practitioners' establishment.

SECTION 3. Section 5.124.020 is amended as follows:

A. Section 5.124.020 is amended to add a definition of "somatic practitioners' establishment" to read as follows:

"Somatic practitioners' establishment " means a business that for pecuniary compensation, consideration, hire or reward, offers massage or bodywork services and qualifies to obtain a valid permit pursuant to this chapter.

B. Except as specifically amended in this Section 3, all other provisions of Section 5.124.020 remain unchanged and in full force and effect.

SECTION 4. Section 5.124.030, is hereby amended to read in its entirety as follows:

5.124.030 Permit required.

It is unlawful and a misdemeanor for any person to act as a somatic practitioner within the city without first obtaining a somatic practitioner permit pursuant to this chapter. It is unlawful and a misdemeanor for any business to operate as a somatic practitioners' establishment within the city without first obtaining a somatic practitioners' establishment permit pursuant to this chapter.

SECTION 5. Section 5.124.100 is hereby amended as follows:

A. The title of Section 5.124.100 is amended to read as follows:

5.124.100 Restrictions and requirements for somatic practitioner.

B. Section 5.124.100 A is amended to read as follows:

"A. No more than ten (10) persons shall be permitted to designate as their business location, or to provide services as somatic practitioners at or in, any one business location or any one building, unless a somatic practitioner establishment permit has been issued for that location or building."

C. Except as specifically amended in this Section 5, all other provisions of Section 5.124.100 remain unchanged and in full force and effect.

SECTION 6. Section 5.124.140 is added to the Sacramento City Code to read as follows:

5.124.140 Application, issuance and term of somatic practitioners' establishment permits.

A. An application for a somatic practitioners' establishment permit shall be made to the city manager on a form provided by the city manager in the same manner, with the same information and payment of an application fee as prescribed in Section 5.124.050, with the following exceptions:

1. The somatic practitioner requirements in subsections (B)(9), (B)(10) and (B)(11) of Section 5.124.050 shall not apply unless the applicant is also applying for a somatic practitioner permit.

2. The applicant shall submit with its application evidence of the written consent by each somatic practitioner permit holder who will provide services as a somatic practitioner at the establishment that his or her designated business location is the location of the establishment.

3. The applicant shall submit with its application proof of liability insurance required by Section 5.124.150(E) of this chapter.

4. The location and design of the establishment must comply with all applicable city codes.

B. The city manager, or the city manager's designee (hereafter "the city manager") shall issue the permit, including such conditions on the permit as the city manager deems appropriate to protect the public health, safety and welfare, if all of the requirements for the permit are met, unless the city manager makes a finding as set out in Section 5.124.060(A). The city manager shall act on the application within thirty (30) days after receiving the recommendation of the chief of police. The failure of the city manager to act on the application within the time specified shall not constitute approval of the application.

C. An applicant aggrieved by the decision of the city manager relating to the issuance or denial of a somatic practitioners' establishment permit may appeal the decision in accordance with the provisions in Section 5.124.070. If an appeal is not filed within the time prescribed in Section 5.124.070, the decision of the city manager shall be final.

D. The term of a somatic practitioners' establishment permit shall be one year from the date of issuance. A new permit is required whenever there is a change in ownership or location of the establishment. Permits must be renewed in the same manner as provided in Section 5.124.080(B). The renewal application must include a current listing of all of the somatic practitioner permit holders that provide services at the establishment.

SECTION 7. Section 5.124.150 is added to the Sacramento City Code to read as follows:

5.124.150 Restrictions and requirements of somatic practitioners' establishment.

A somatic practitioners' establishment permit holder shall comply with all of the following:

A. Somatic practitioner permit holders providing services at the establishment must be properly licensed under this chapter and have designated the establishment as their business location.

B. No more than fifteen (15) somatic practitioner permit holders may provide services in the establishment at the same time, although the number of permit holders that designate the establishment as their business location is not limited.

C. The hours of operation are limited to between eight a.m. and ten p.m.

D. No more than one somatic practitioner shall provide massage/bodywork services to any person at the same time.

E. Maintain general liability insurance coverage in the minimum amount of one million dollars ($1,000,000.00) per occurrence, and the policy must be endorsed to include all of the somatic practitioner permit holders who operate in the establishment and notice of cancellation, expiration or reduction in coverage is to be provided to the city manager.

F. Pay annually the applicable city business operations tax.

G. Display the somatic practitioners' establishment permit and the permits for each somatic practitioner permit holder operating in the establishment in a conspicuous location.

H. Maintain a log with the names of all clients that received massage/bodywork services at the establishment during the prior 12 month period by date, time and name of the somatic practitioner that provided the service. Permit inspection of this log by city personnel during business hours and without prior notice.

I. Not install any type of device that monitors whether clients possess surveillance equipment.

J. Not arrange for somatic practitioners working at the establishment to provide massage/bodywork services to clients or customers of the establishment at any location other than the establishment.

SECTION 8. Section 5.124.160 is added to the Sacramento City Code to read as follows:

5.124.160 Place of business of somatic practitioners' establishment.

Chapter 5.40 of this title notwithstanding, a massage establishment shall not be required to obtain an adult-related establishment permit if all of the following conditions are met:

A. A somatic practitioners' establishment permit has been issued for the establishment;

B. Only massage technicians holding a somatic practitioner permit provide massage or bodywork services in the establishment; and

C. No person required to be licensed under the provisions of Chapter 5.04 of this code owns or operates, provides services in, or is employed at, the establishment.

SECTION 9. Section 5.124.170 is added to Chapter 5.124 the Sacramento City Code to read as follows:

5.124.170 Suspension or revocation of somatic practitioners' establishment permit – Appeal.

A. Any somatic practitioners' establishment permit issued pursuant to this chapter may be revoked or suspended by the city manager, after a hearing, on the following grounds:

1. The permittee has failed to comply with any applicable provision of this chapter, any other provisions of this code or the city's zoning ordinance, or any other local, state or federal law or regulations applicable to the establishment's activities, or the permittee has committed a crime of moral turpitude;

2. The permittee has allowed the establishment to be conducted in such a manner as to constitute a nuisance or to be injurious to the public peace or morals; or

3. The permit for a somatic practitioner permit holder whose designated business location is at the establishment has been revoked or suspended in the manner provided in Section 5.124.090, and the revocation or suspension was based on a violation under this chapter that occurred either at the establishment or with the knowledge and consent of the permittee.

B. The process for appealing revocation or suspension of a somatic practitioners' establishment permit shall be the same as set out in Section 5.124.090(B).

C. Upon written notice by an insurer or verification of cancellation, expiration or reduction in insurance coverage resulting in noncompliance with Section 5.124.150(E) of this chapter, a permit issued to an establishment pursuant to Section 5.124.140 shall be automatically suspended effective upon the effective date of the cancellation, expiration, or reduction in coverage. The suspension shall continue until the required insurance coverage is reinstated and the city manager receives written notice from the insurer indicating compliance with the requirements of this chapter, or until the permit is revoked or expires.

Adopted by the City of Sacramento City Council on _____, 2007 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

_____
MAYOR

Attest:

_____
City Clerk

Passed for Publication:
Published:
Effective: