

## Law and Legislation Committee Report

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**File ID:** 2019-00390

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**Discussion Item 05**

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**Title: Somatic Practitioners and Establishments**

**Location:** Citywide

**Recommendation:** Discuss and consider options for improving the City's regulation of somatic establishments and practitioners under Sacramento City Code chapter 5.124.

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**Presenter:** Tessa St. John, Program Manager, (916) 808-4847, Department of Finance

**Attachments:**

- 1- Description
- 2- Community Meeting Feedback
- 3- CAMTC Recommendations
- 4- Comparable City Regulations

## Description/Analysis

**Issue Detail:** There has been a proliferation throughout the City of Sacramento (“City”) of somatic (i.e., massage) businesses operating as fronts for houses of prostitution and human trafficking, threatening the public’s welfare and harming legitimate providers by perpetuating stereotypes of the “massage parlor” as a source of illicit sexual activity. Staff recognizes the value of somatic therapy and healing as a practice and profession, offering the public valuable health and therapeutic services. However, unless properly regulated, the practice and profession may be associated with unlawful activity and pose a threat to the quality of life in the community.

The City’s Police Department (“PD”) and Community Development Department’s Code Enforcement Division (“Code”) have strived to address persistent, problematic businesses, and locations, but have struggled with effective and lasting intervention. For example, coordinated efforts between PD and Code to conduct stings are time consuming and often result in citations or arrests of individuals, but frequently the somatic businesses simply hire new staff and continue unlawful operations. In addition, some businesses are only shuttered after lengthy entanglements with property owners and the eviction process. In 2018, PD conducted nearly 50 investigations of somatic businesses resulting in over 30 arrests.

Past regulations of these businesses have been unsuccessful because the businesses evade regulations by changing their business names or descriptions and changing or clouding the management and ownership. In addition, state regulation of somatic businesses by the California Massage Therapy Council (“CAMTC”) has preempted the City from regulating somatic businesses that have state certification. This means that when there are issues with state certified somatic businesses there is not a City permit to suspend or revoke or a clear path towards closing the business.

To improve the City’s current regulations, staff has reviewed CAMTC recommended best practices for local jurisdictions and the practices of other cities and counties throughout the state. In February, staff hosted a public meeting with currently certified and permitted practitioners to hear the concerns of those operating legitimate businesses. Attachment 2 provides a list of the questions and concerns raised at this meeting.

In an effort to address the challenges the City has faced, as well as concerns raised by somatic practitioners and establishment owners and community members, staff has prepared the following options for the Law and Legislation Committee’s (Committee’s) consideration:

- **Business permit requirements:** Adding clear definitions that address different business models, namely mobile/out-call businesses, commercially located businesses,

and sole proprietorships and requiring permits for each of these business models will provide the City with better regulatory control and the ability to quickly close businesses engaging in illegal activity.

- **Tiered permitting:** Creating a permitting system that addresses the different business models and corresponding fees to remain affordable for all business types. Examples include eliminating unnecessary business requirements and lower costs for sole proprietorships and out-call businesses, a multi-year permit, and discounts provided for businesses owned by those certified by CAMTC.
  - Some cities have implemented registration programs, instead of a permitting process. The registration process is a low or no cost program for somatic/massage business owners that still provides some regulatory control to the city.
- **Practitioner permits:** Many cities have eliminated local practitioner permits (see Attachment 4) and are requiring CAMTC certification for all practitioners to operate in their city. The City currently has around 50 locally certified practitioners that would need to obtain state certification to continue practicing if this requirement changed.
  - Requiring CAMTC certification eliminates the need for the City to issue a practitioner permit and can focus on regulations of the business owners.
  - A deadline would be established to allow current locally permitted practitioners time to obtain state certifications.
- **Increased requirements and restrictions on somatic/massage businesses:**
  - Require all somatic businesses to submit a register of all employees and job titles. This will enable Code Enforcement and PD to clearly identify practitioners and employees when conducting inspections.
  - Add conditions regarding appropriate (i.e., non-transparent) clothing for business staff.
  - Prohibit sexually explicit advertising and require the City permit number be included in all advertising.
  - Prohibit any person from residing at a commercial somatic business location.
  - Require a posted listing of all services and costs offered at the business.
- **Suspension and revocation:** Develop a streamlined and effective suspension, revocation, and appeal process.
  - Increase regulations following suspension and revocation, examples may include limiting the transfer of the business during pending city action, prohibiting the business owner from reapplying for a defined number of years, and prohibiting

any somatic or massage business from operating at the location where a permit has been revoked.

These changes will empower the City to regulate and act against businesses engaging in illegal activity while limiting the impact on legitimate business owners. Clarifying the permit requirements and expanding the citable offenses means action can begin without a costly and time-consuming police sting and will shift the responsibility and consequences from the individual to the owner. These best practices have proven successful in local governments in California, including San Mateo County which closed 11 illicit establishments in the four years after implementing changes.

Staff is asking the Committee to discuss and consider the City's regulation of somatic businesses including broadening the citable offenses and streamlining the ability to close problem businesses and provide staff with further direction.

**Policy Considerations:** Currently, individuals wanting to operate a somatic business or establishment without state certification must obtain a City somatic practitioner or establishment permit to operate in the city. (Sacramento City Code chapter 5.124.) The practitioner permit is intended for practitioners who are not currently certified by the state. Further exceptions for state certified business owners has resulted in few permitted establishments, leaving the City with little regulatory control over businesses staffed or managed by CAMTC certified practitioners. The current establishment permit outlined in the code is complicated and requires comprehensive insurance, a surety bond, and permit fee resulting in expenses of \$8,000, making it cost prohibitive for small businesses. Changes to require all somatic businesses to obtain a City permit, with reasonable costs and requirements, will provide the City regulatory control without undue hardship on legitimate businesses.

**Economic Impacts:** None.

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** This action is not a "project" subject to CEQA because it involves administrative matters and will not result in new physical development, direct changes to the physical environment, and any reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines § 15378(b)(5).)

**Sustainability:** Not applicable.

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** CAMTC has consolidated and shared recommended regulations based on successful approaches taken in other cities (Attachment 3). Upon observation and request by the PD, City Attorney's Office, City Manager's Office, Finance Department, and Code, staff is providing information on potential changes to the current code to protect communities from massage businesses acting as fronts for illegal activity.

**Financial Considerations:** Permit fees will be established to offset the staff time included in the implementation of the program and enforcement of the code.

**Local Business Enterprise (LBE):** Not Applicable.

**City Hall, February 28, 2019, 5:15-6:30 pm**

**Comments**

- All practitioners should be required to obtain CAMTC certification.
- Avoid returning to treating somatic practitioners as “adult businesses” and charging upwards of \$5,000. They were previously treated under the assumption that illegal activity would occur.
- Business owner fines should not be as steep as the fines to the individual caught doing illegal activity.
- Businesses may consider reducing privacy: curtains instead of doors or half doors to increase transparency. However, many clients insist on privacy.
- Business owners need to challenge therapists to stay honest and hold clients accountable. Suggested using an intake form that outlines if a client makes inappropriate/illegal advances, they will not be seen again. Business owners should also have contracts with therapist prohibiting illegal activity or face termination and reporting to certifying agency.
- Certain education level should be required for all massage therapists.
- Frequently feels like those business owners and practitioners who follow the law are those penalized.
- Long term solution- requiring a state license to make it harder to open establishments.
- Many who work in other cities are already registered with the local police department. Do not want to have another background check.
- More expensive/fees are the biggest concern.
- Regulating what people wear is intrusive and will disproportionately apply to women.
- Second time offenders should face federal charges.
- Suggestion to publish photos of clients that have been caught soliciting sexual acts – “wall of shame.”

**Questions**

- Are businesses currently operating with multiple state certified employees?
- Are most of the customers engaging in illegal activity male?
- Are the business owners whose purpose is to provide illegal services being charged?
- Can massage therapists report (to law enforcement) individuals who ask for inappropriate/illegal services?
- Can the code state that human trafficking is an automatic charge for the business owners engaging in illegal activity?
- Does Sacramento County require an extra permit and how much is it?

## Attachment 2 – Community meeting feedback

- Does the current law require the practitioner to conspicuously post their certification/permit (e.g., hairdresser)?
- How are they holding property owners and establishment owners accountable?
- How is the ordinance/code and enforcement tied together?
- If an owner's intention is to allow/promote illegal services, will the owner be charged with a federal charge?
- If I own multiple locations and cannot monitor all business all the time, will I face consequences if my employee engages in illegal activity that I am unaware of?
- Is it possible to draw a line on how many employees an establishment can have?
- Is it possible to regulate the structure of rooms? Less privacy?
- Is the illegal activity being report to the district attorney?
- Is there a way to not issues a permit to individuals once they have been cited for illegal activity?
- Isn't checking for permits and more enforcement enough?
- What about a registration process, instead of an additional permit?
- What are the consequences for those people who aggressively request sexual acts from practitioners?
- Why is it difficult to shut down businesses if business owner is certified with state?



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*Note – The following is a working document listing provisions in massage ordinances, most of which have been implemented in California, that have provided effective tools to prevent or abate illicit activities under the guise of massage. It is not an official position paper of CAMTC.*

**Best Practices in Local Massage Ordinances** (assuming that a jurisdiction has also made a commitment to adequate enforcement and cooperation with CAMTC in terms of sharing reports of arrests and citations, etc)

“Best” defined as providing adequate means of enforcement with minimal local resources, sufficient authority by jurisdiction, consistent with state Massage Therapy Act (Business & Professions Code Section 4600-4621, Business and Professions Code Section 460 and Government Code Section 51030-51034

1. Definitions - Definitions consistent with those in BPC Section 4601
2. Operator – include anyone under the BPC definition of “owner” and also a manager with substantial authority over the operations
3. If establishment utilizes contractors, only one establishment permit/registration (but each would have a business license)
4. Criminal and general massage related background check including livescan and subsequent arrest notification of non-certified owners and operators
  - a. Deny or revoke for massage related offenses
  - b. Deny or revoke for specified actions by CAMTC against owner/manager/operator
  - c. Deny or revoke for theft and fraud
5. School – refer to approval pursuant to BPC Code 4600 (or Division 2, Chapter 10.5 as currently drafted or may be amended)
6. Registration of certification by an individual or by the business of all providers – city reserves the right to request that they appear in person (to verify that the certificate and ID card belong to the actual person if the city has reason to believe otherwise)
7. Registration of all employees, even if not massage providers (to reduce the possibility of everyone being janitors, receptionists and friends when LE inspects). Warning for first violation (to not unduly burden a legitimate owner who may neglect to do so, as this is unprecedented in other professions and businesses)
8. Prohibition on anyone working in or owning the business if they have had a certification suspended or revoked by CAMTC or denied for grounds other than lack of payment or meeting educational qualifications, or had a state license in CA or another state suspended or revoked for grounds related to the practice of massage
9. Revocable registration of the establishment with streamlined protocol to revoke
10. Changes to any staff reported to the city within 5 days
11. Everything in BPC 4609 should be grounds for city/county arrest/citation
  - a. Violations of local code that CAMTC can use for disciplinary action
  - b. Condoms
  - c. Inappropriate draping
  - d. Unprofessional dress
  - e. Suggestive advertising
  - f. Touching of the genitals
  - g. Owner/operator/manager responsibility

12. Renewals of individual registration to coincide with certification renewal date, with renewal reminders sent
13. Exemptions for cosmetologists, barbers, or professionals licensed under Division 2 (Section 500 et seq) of B&P code or Chiropractic Act are limited to the licensed professional or employees working within their scope of practice and under their license – and not to independent contractors or tenants. This prevents the medical provider from claiming that they are not responsible because the violators were contractors – as has happened with some chiropractors and acupuncturists. Ideally name the professions – physicians, physical therapists, nurses, occupational therapists, acupuncturists, while working within their scope of practice.
14. Prohibition on a new establishment opening in the same location as one that has been closed for illicit activity or other serious violations – at least two years. Cities are going as high as 10 years, although 1-5 is most common
15. No transfer of ownership while an action by the city is pending
16. No transfer of business without city notification or approval
17. Substantial fines for significant violations to cover cost recovery – so violators pay rather than high inspection fees that hurt the legitimate businesses
18. Possibly add grounds for revocation based on repeated violations of EDD law/Labor code (I don't believe that I have seen this used as yet)
19. If the city requires establishment or conditional use permits exempt sole providers – by definition, if CAMTC suspends or revokes their certification, the business is closed (this reduces the chances of legitimate therapists working “off the radar” to avoid unaffordable fees)

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## Attachment 2 Comparable City Regulations

City	CAMTC Certification required?	Permits issued:
Bakersfield	Yes	-Massage establishment
Fresno	Yes	-Massage business registration
Long Beach	Yes	-Massage establishment
Los Angeles	Yes	-Massage Establishment -Outcall Massage Business
Oakland	No	-Massage therapist -Massage therapist trainee -Massage establishment
<b>Sacramento</b>	<b>No</b>	<b>-Practitioner</b> <b>-Somatic establishment</b> (limited applicability)
Sacramento County	Yes	-Massage provider special business permit -Massage enterprise special business permit
San Diego	No	-Therapist -Establishment -Off-premises
San Francisco	No	-Practitioner -Massage business: establishment, sole practitioner, outcall massage services
San Jose	Yes	-Massage business
San Rafael	Yes	-Massage establishment
Vacaville	Yes	-Massage establishment