

CITY OF COTATI
MINUTES for the Regular Meeting of the Planning Commission

DATE OF MEETING: May 17, 2010
TIME OF MEETING: 7:00 pm
PLACE OF MEETING: Cotati City Hall, City Council Chambers
201 West Sierra Avenue, Cotati, CA 94931

I. CALL TO ORDER

Chair Pagnusat called the meeting to order at 7:00 pm

II. ROLL CALL

Commissioners Present: Hardy, Ritter, Moore, Hancock, and Pagnusat
Commissioners Absent: None
Staff Present: Lustig, Harris, Stewart, and Pajon

III. APPROVAL OF MINUTES

A. For the Regular Meeting on April 19, 2010

Motion: Commissioner Moore made a motion and Commissioner Hardy seconded the motion to approve the April 19, 2010 minutes as presented.

Yes: 5 Noes: Abstain: Absent:

IV. CHANGES TO THE AGENDA

There were no changes to the agenda.

V. ORAL AND WRITTEN COMMUNICATIONS

There were no oral or written communications.

VI. MATTERS AT HAND

A. Request for a Use Permit for a custom vehicle restoration and manufacturing business to locate at 368 Blodgett Street, Suite 2. This application is exempt from the California Environmental Quality (CEQA) Act under section 15301, Existing Facilities.

PA# 5/10
APN: 046-111-050

Applicant: Paul Shaughnessy
New Metal Kustomz

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Assistant Planner Harris presented the staff report and reviewed the Conditions of Approval. She stated that staff recommends approval of the Use Permit request and of PC Resolution 10-09 with Conditions of Approval and grammatical correction.

OPEN PUBLIC HEARING at 7:04 pm

Paul Shaughnessy, applicant, 1501 E. Madison Street in Petaluma, in response to Chair Pagnusat, stated that he agreed with all of the Conditions of Approval.

CLOSED PUBLIC HEARING at 7:05 pm

Commissioner Hardy stated that she approves of the Use Permit as long as it complies with Air Quality Control guidelines.

Motion: Commissioner Hardy made a motion and Vice Chair Hancock seconded the motion to approve PC Resolution 10-09 as amended and with Conditions of Approval.

Yes: 5 Noes: Abstain: Absent:

PLANNING COMMISSION RESOLUTION NO. 10-09
EXHIBIT "A"
CONDITIONS OF APPROVAL

Planning Division

1. Pursuant to the City of Cotati Land Use Code Section 17.62.050, this Use Permit is issued to allow "manufacturing – medium intensity" for custom vehicle restoration and manufacturing at 368 Blodgett Street, Suite 2. This use will occupy a total of 10,200 square feet with 500 square feet devoted to office and 9,700 square feet devoted to manufacturing.
2. The applicant shall not exceed regular business hours as defined in the Land Use Code.
3. All operations shall occur completely within the building, with the exception of vehicle travel. Noise shall be contained within the building and shall not be a nuisance to the neighbors; all windows and doors shall be closed during noise-generating activities. No outdoor storage is permitted.
4. The applicant shall obtain the required sign permit prior to installation of any signage, to the satisfaction of the Community Development Director.
5. Vehicle washing is prohibited, indoors or outdoors.
6. The applicant shall contact the Sonoma County Department of Emergency Services to determine the level of monitoring required for the hazardous materials within 30 days of Use Permit approval.

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7. The applicant shall properly dispose of hazardous materials in compliance with all local, State, and Federal regulations at all times.
8. The applicant does not propose to use the three existing, capped-off floor drains. These drains shall remain capped-off.

Building Division

9. The applicant shall apply for and receive a building permit for any alterations to the building, interior or exterior, prior to performing the work. This includes building, electrical, mechanical, and plumbing work. The spray booth requires a building permit and approval of the Fire Marshal.

Police Department

10. The applicant shall install a burglary alarm system within 30 days of Use Permit approval.

Industrial Waste

11. The applicant shall apply for a Wastewater Discharge Permit Application within 30 days of Use Permit approval.
12. No floor drains and/or sumps are permitted in or near the spray booth and paint mixing areas.
13. All wet/dry sanding activities shall take place inside the building and shall not run off into the storm drain system. Any discharge into the sanitary sewer shall require a City approved pretreatment system.

Bay Area Air Quality Management District

14. The applicant shall provide a completed Initial Notification Form to BAAQMD within 30 days of Use Permit approval. No permits are required if the applicant uses less than 30 gallons of paint annually.

Engineering Department

15. The applicant shall change out all fixtures to low water use (faucets, high efficiency [1.28 gallons per flush] toilets) within 30 days of Use Permit approval.
16. The applicant shall obtain a Wastewater Discharge Permit with Industrial Waste.
17. The applicant shall install a reduced-pressure backflow device if not currently installed for in-building and landscaping use within 30 days of Use Permit issuance.

Rancho Adobe Fire Protection District

18. The applicant shall comply with all local and State fire codes and ordinances.
19. The applicant shall replace the keys in the knox box at the time the keys are handed over

or when the locks are changed.

20. The applicant shall contact the Fire District to obtain a fire/life safety inspection within 30 days of Use Permit approval.
21. The applicant shall ensure that the business name and suite number are located on the front door and the monument sign within 30 days of Use Permit approval.
22. The applicant shall submit an emergency contact form to the Fire District prior to the fire/life safety inspection.
23. For any interior or exterior building modifications, including installation of the spray booth, the applicant shall submit at least three (3) sets of plans and the required fees to the Fire District, for review and approval prior to issuance of building permit and construction.

Administrative Services Department

24. The applicant shall obtain a City of Cotati business license within 30 days of Use Permit approval.

- B. The Planning Commission of the City of Cotati will hold a public hearing to consider recommending to the City Council adoption of a Professional Massage Licensing Ordinance, which would establish regulations for massage practitioners and massage establishments. Adoption of the ordinance would be exempt from the California Environmental Quality Act (CEQA) under section 15061(b)(3).

Assistant Planner Harris presented the staff report, explaining the history of this item and why the city is considering this ordinance at this time. She said the ordinance works with State law, SB731, which was recently adopted to fight human trafficking. She spoke about the city's concern for human trafficking and prostitution, and that several illicit businesses have established in Cotati under the guise of a massage establishment. She explained to the Commission the importance of having an ordinance with regulations that give law enforcement the tools needed to fight prostitution and to help control human trafficking. She reviewed the process and cost for the certification process for a massage therapist through the State. She explained that the ordinance provides protection for legitimate massage therapists and keeps illegal businesses from establishing in the first place and is supported by the massage industry.

Chief Stewart explained the perspective of the police department and the complaints it receives from the citizens of Cotati. He explained the negative impacts to the surrounding businesses and the patrons of those businesses. He expressed support for the ordinance and the need to have the ability and tools to provide a safe environment.

Discussion ensued about the process if young women were discovered at an illicit business.

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Commissioner Moore expressed concern with the portion of the ordinance that indicates that a door would not be closed. She stated that for privacy during a massage a door must be allowed to remain closed.

Assistant Planner Harris explained that the intent was that it couldn't be locked.

Acting Community Development Director Lustig said that the legitimate massage businesses will not be harassed with the passage of this ordinance.

In response to Vice Chair Hancock's question about how police determine if a business is legitimate, Chief Stewart said that state certification and attire are some of the things that they would immediately look for upon entering an establishment.

Commissioner Hardy said that her original take after reviewing this ordinance was that it is over-regulating citing such as labeling lotions, providing clean linens, and attire requirements.

Discussion ensued about requiring certification only without adding the additional regulations.

Acting Community Development Director Lustig explained why the additional regulations were added and recommended addressing the representatives from the massage therapy industry to explain in detail why the ordinance was written this way.

Commissioner Hardy stated that the ordinance appears to push the problem to the next town and doesn't seem to solve any of the issues. She asked about the victims and what assistance is available to victims of human trafficking.

Acting Community Development Director Lustig responded to Commissioner Hardy, explaining the importance of regulation at this level. Chief Stewart additionally stated that the State has now recognized that this is a huge problem and that staff does not feel that we are throwing it in our neighbor's backyard. The City cannot look the other way and not address the issue. The citizens of Cotati want these situations handled and are frustrated that the police department does not have the tools to address this issue. Further, the illicit businesses establish in Cotati because other cities have regulations.

Discussion ensued about administrative fines if a business were to be shut down and how to keep them from opening up in a different location.

Commissioner Ritter stated that she feels this ordinance protects the legitimacy of the massage industry.

Commissioner Hardy stated that she received information that the landlords of these properties charge a much higher rent. She asked if the landlord can be penalized.

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Acting Community Development Director Lustig stated that the property owners allow these businesses to rent because there are no regulations. The property owners are ultimately liable.

PUBLIC HEARING OPEN at 7:37 pm

Amanda Whitehead, Government Relations Chair for the California Chapter of the American Massage Therapy Association, 1783 Spruce St. #3, Berkeley, CA. She stated that she is also a massage therapist. She explained that the organization that she represents was a sponsor of SB731. She thanked staff for all of the work they put into this ordinance and stated that this ordinance makes sure that there is a difference between legitimate massage therapy and illegitimate businesses. She expressed support for law enforcement having the tools available to make sure that these illegitimate businesses are removed. She reviewed the low cost of the State certification.

She had the following comments:

- Recommended reviewing and clarifying the “no locked closed door” section of the ordinance
- She agreed that each establishment should be required to get a business license, not each massage therapist
- The 120 days to comply might be difficult given the time it takes to obtain State certification for already existing businesses
- In response to the comment on the lotions, linens and attire, she stated that the information in the ordinance represents best practices within the industry

In response to Vice Chair Hancock’s comment that it didn’t seem necessary to name the different types of massages, Ms. Whitehead stated that she didn’t think that it was restrictive and does not have an opinion either way.

Vice Chair Hancock said that he thinks that it should just say that beds and floor mattresses should not be allowed.

Bernadette Murray, massage therapist, 443 1st Street, Woodland CA., explained that there are resources out there to help the victims. She spoke about several organizations that offer victim assistance.

She commented on the following:

- She stated that it is very important that law enforcement has the necessary tools
- She responded to the comment on the lotion, stating that these requirements are essential for hygiene
- She said that the language in the ordinance reflects standard language for massage therapists
- She forwarded a list of schools for which the State will not accept training hours
- She agrees that the ordinance should not allow massage therapist to advertise in the adult services section of newspapers

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Discussion ensued on the list of schools identified and what proof is necessary to become certified.

Claire Fetrow, owner of Hub Cyclery in Cotati, asked what percentage of customers are male vs. female and what are typical hours of operation. She explained that her business in Cotati used to be located next to an illegitimate massage business. She described the negative impacts to her business, which included offending her customers, and stated it had a huge impact on leaving that location.

Christin Williamson, 640 E. Cotati Avenue, representing the Massage Envy business owner, stated that while they support getting rid of the illegitimate massage parlors, they do not believe this ordinance is the answer. She read a letter from the owner not supporting the ordinance requesting another alternative to shut down these businesses. She expressed concern for the cost of certification for each massage therapist and explained that after Santa Rosa passed an ordinance the Santa Rosa branch lost many of their employees. She stated that they are struggling to make ends meet and it would be a hardship to require the certification.

In response to Vice Chair Hancock, Ms. Williamson stated that they have 16 massage therapists working in Cotati. She stated that in addition to cost, she feels that some of the wording is too restrictive.

Vice Chair Hancock asked Ms. Williamson if she had any suggestions for how to eliminate illegitimate businesses without this ordinance.

Ms. Williamson stated that she would talk to her boss and submit something in writing.

Jenny Blaker, 8166 Arthur Street, explained that she used to be a massage therapist and was a member of the American Massage Therapy Association, and was part of the group that did not support a similar ordinance when it came before this Commission many years ago. She expressed concern when learning of the prostitution and human trafficking that was going on in Cotati at businesses claiming to offer massage therapy. She stated that the three issues being discussed are prostitution, human trafficking and massage therapy. She said that she attended a class last weekend with information on human trafficking and wondered what this ordinance can do to help the victims. This stated that this ordinance should include going after the owners of these businesses.

Her concerns with the ordinance include the following:

- She ask about the effectiveness of SB731 and why we need a local ordinance when there is a state ordinance
- She is concerned with the requirement of 120 days to comply because the State appears to have a backlog of at least 90 days for certification at this time

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- She stated that massage students are required to go out immediately and charge for massages, which wouldn't be under a supervisor. This conflicts with the wording in the ordinance
- There are massage styles that are not listed in the ordinance
- She asks if other kinds of licenses for the healing arts are exempt from this ordinance
- Specific wording in section 9.20.050, state certificate – recommends saying “should be a misdemeanor for any person reporting to be a massage therapist to formally engage in the practice of massage for compensation without a valid and unrevoked state certificate.”
- She said that the definition of massage in this ordinance is not the same as in massage organizations. She stated that it does not mention for therapeutic purposes.
- The phrase of 9.20.020a – she thinks that “external parts” should be left out.

She offered contact information for the speakers from the class she attended on human trafficking.

Gayle, Cotati citizen explained that sometimes when she goes to get her massage it is only her and her therapist and they lock the front door for security reasons. She wants to still be able to have the door locked.

In response to the question about the percentage of women to men, Ms. Whitehead and Ms. Murray estimated their practices include about 70% women and 30% men, and the hours of operation would typically be 9:00 am to 9:00 pm.

PUBLIC HEARING CLOSED at 8:27 pm

Commissioner Hardy had comments and concerns on the following:

- 9.20.020(a), external parts of the body, the concern should be the inner parts
- 9.20.110(c), would like to see the language tightened up, suggested removing the language that included the list of the types of massages
- 9.20.120(d), this language could be changed to “fully shielded” instead of “fully draped”
- 9.20.110(c), request “chair” to be added to this section
- 9.20.130(a), too much detail in this section
- 9.20.130(b), using a cleaning agent, especially at a chair massage, seems to be too much
- 9.20.110(a) request clarification on the “closed door”
- 9.20.230(c) regarding exemptions, “only under direct supervision of an instructor” indicates that the instructor must be standing right there
- Request clarification of SB731, the bill would repeal provisions on January 1, 2016
- 9.20.230(e) change to - “at that location as their primary location”

Discussion ensued regarding the sunset date of 2016 for SB731.

Acting Community Development Director Lustig stated that SB731 has a sunset date of 2016. This doesn't mean that it will not be renewed. She suggested adding language in the ordinance to include “state or local applicable” certification, just in case.

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In response to Commissioner Hardy's concern that the cost of local certification would be more expensive, Acting Community Development Director Lustig said that language can be added to say "local certification at a comparable fee".

In response to Vice Chair Hancock's concern that someone shouldn't be penalized for having a locked door, Chief Stewart responded explaining that reasonable hours are important and a safety assurance.

Acting Community Development Director Lustig pointed out that the ordinance allows a locked door if there is no other staff on-site.

Vice Chair Hancock asked staff if they had any information indicating the new ordinance in Santa Rosa has made an impact to Massage Envy?

Acting Community Development Director Lustig said no and that the only feedback that staff received regarding the Santa Rosa ordinance was that it went through the adoption process expeditiously and with a lot of support.

Vice Chair Hancock asked about the 120 days to comply with this ordinance.

Acting Community Development Director Lustig said that if the date is extended, this would also extend it for the businesses that were not legitimate. She stated that if the therapist could show in good faith that they were in the certification process, then staff could offer an extension for that person.

Discussion ensued about the sunset of SB731. Ms. Murray explained that the sunset clause is common to many senate bills to ensure review.

The Commission reviewed the entire ordinance for discussion and made the following changes:

- 9.20.020.K add "or a local certification at a comparable fee" after "...presently known as the California Massage Therapy Council (CAMTC)..."
- 9.20.050 add "for compensation" after "...engage in the practice of massage..."
- 9.20.110.A delete "closed" after "locked"
- 9.20.110.C delete the first sentence describing the acceptable types of massage mats or tables
- 9.20.120.D delete the first sentence describing the how a patron must be draped

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- 9.20.230.C consider deleting "direct personal" from the sentence, "...under the direct personal supervision of an instructor..."
- 9.20.230.E add "at that location" after "...do not practice massage therapy as their primary occupation..."

OPEN PUBLIC HEARING at 9:05 pm

Discussion ensued about the level of supervision for massage students.

Ms. Whitehead explained that her school had the students train at a student clinic in the school

Ms. Blaker said that her experience was practicing massage outside of school and charging for it. She said that the students could carry a certificate to show that they were a student in training.

Ms. Murray stated that her training in Texas required each student to have 50 hours of apprenticeship and they were not allowed to be compensated.

After discussion, the Commission agreed that staff will look into this and if appropriate change the language to read "on site" or remove the language if students are allowed to train outside the school.

CLOSED PUBLIC HEARING 9:15 pm

Motion: Commissioner Ritter made a motion and Commissioner Moore seconded the motion to approve PC Resolution 10-10 as amended.

Yes: 5

Noes:

Abstain:

Absent:

VII. REPORTS BY STAFF

None

VIII. REPORTS BY COMMISSION

None

MEETING AJOURNED by Chair Pagnusat at 9:16 pm

Submitted Respectfully by:

Keri L. Pajon