

TO: JAMES L. APP, CITY MANAGER

FROM: ED GALLAGHER, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: MISCELLANEOUS 14-002 – CITY COUNCIL INTERPRETATION (APPLICANT: SHERRY MERINO)

DATE: AUGUST 19, 2014

Needs: Request by Sherry Merino for the City Council to review Section 5.16.010 of the Municipal Code related to Fortunetelling, and provide direction on whether the Council is interested in considering making a determination regarding fortune tellers to be similar to other office uses such as counseling, and/or personal services such as barber shops and beauty salons, and permit them in the same zoning districts as those uses.

Facts:

1. Sherry Merino operates a fortunetelling business in San Luis Obispo and would like to establish her business in Paso Robles, in the building located at 1636 Spring Street (See Letter, Attachment 1).
2. Chapter 5.16 of the Municipal Code, (Fortunetelling), specifically Section 5.16.010, prohibits fortunetelling in the R, C-1, and C-2 zoning districts (See Attachment 2, Chapter 5.16).
3. Fortunetelling was originally regulated by Ordinance 108N.S. adopted in 1944, which was later updated and has been regulated by Section 5.16.010, since in 1959.
4. The intent of the City regulating the use was to keep fortunetelling out of residential zones, the downtown, or on Spring Street. Apparently, fortunetelling was regarded as an undesirable use in those areas.
5. City Staff reviewed how other cities regulate fortunetelling and determined that of the six cities that were researched, three cities (San Luis Obispo, Sacramento and Grover Beach) allow the use subject to approval of a Use Permit. The other three cities (Pismo Beach, Davis, and Santa Maria) consider fortunetelling as a service or general commercial use and allow it without a Use Permit. (See Attachment 2).
6. The question before the City Council is: (1) whether the Council still wishes to regulate fortunetelling as it has been regulated by the City since 1944, or to consider grouping it in with other uses such as personal services or office type uses; and (2) if the Council supports grouping it in with other use categories, what would be suitable zones to permit this use.

**Analysis and
Conclusion:**

As mentioned above, various other cities consider fortunetelling the same as other personal service or commercial uses, and allow them either with or without a use permit. Ms. Merino is requesting that the City Council take the measures to add flexibility to the regulations on fortunetelling.

Depending on Council direction, staff would need to bring back an amendment to Section 5.16.010 of the Municipal Code to take in consideration the recommended changes.

Policy

Reference: Uptown Town Centre Specific Plan, Zoning Ordinance, Municipal Code.

Fiscal

Impact: None.

Options:

The City Council is requested to consider the following options:

- a. By voice vote, direct staff to bring back a code amendment to Section 5.16, expanding the zones in which fortunetelling business can be operated, without the need to approve a Conditional Use Permit.
- b. By voice vote, direct staff to bring back a code amendment to Section 5.16, expanding the zones in which fortunetelling business can be operated, with the need for a Conditional Use Permit.
- c. Amend, modify, or reject the foregoing option.

Attachments:

1. Applicant's Letter
2. Chapter 5.16
3. Code Review Analysis

To the city of Paso Robles

My name is Sherry Merino, this letter is in reference to municipal code 5.16 regarding psychic readings. This code was established some 55 years ago and has not been updated since.

Chapter 5.16.030 states that the business license fee will be at a rate of \$30 per day, I'm hoping that you will agree that this code is outdated and unrealistic. I would like to have this code amended and brought to a more reasonable yearly fee.

Chapter 5.16.010 section A states that psychic readings are not allowed in R, C1 or C2 zones. This code also has not been updated since 1959. The area this code covers would exclude me from running business in most of the city.

I am looking to open my business at 1636 Spring St. This location is zoned T3-F which allows professional consultants, I feel this best suits the services I provide which are described as spiritual and psychic counseling. I consider myself a spiritual consultant offering my clients insight and guidance.

I've been licensed and running business at the same location in San Luis Obispo for over 20 years and in that time I have established a large north county client base. Because of this I would like to open a second location.

Thank you for taking the time to read this and for considering my requests. If you have any questions or need more information don't hesitate to call or email me.

Sincerely,
Sherry Merino
805-545-0808
merino710@gmail.com

Fortune Teller Code Review – 5.16

RESEARCH CITIES

Summary:

- 3 cities allow subject to a Use Permit, 3 cities allow as permitted uses
- Santa Maria had a similarly outdated section to their municipal code and the city council chose to repeal and delete it in 2006

City of San Luis Obispo

Zoning

Fortune tellers, psychics designated as *Personal Services – Restricted* (designation described below)

- Only allowed in C-R & C-S zoning areas (Retail Commercial & Service Commercial)
- Requires directors use permit approval

“Personal services – restricted” means personal services that may tend to have a blighting and/or deteriorating effect upon surrounding areas and which may need to be dispersed to minimize their adverse impacts.

Fees

\$25.00 – tax for new application

\$140.00 – business license fee

\$1,000.00 – surety bond

Additional Use Permit fees

City of Sacramento

Zoning

Fortune tellers, palmist, tarot card reader listed as:

- Only allowed in GC & LC zones (General Commercial & Limited Commercial)
- Permitted subject to issuance of a conditional use permit by the Board of Supervisors upon recommendation of the Project Planning Commission.

Rates

\$75.00 – Investigation fee

\$25.00 – License fee

Additional Conditional Use Permit fees

City of Grover Beach

Zoning

Fortune tellers listed as:

- Only allowed in one commercial zone
- Requires conditional use permit.

Rates

\$100.00 – Annual license fee

\$2,000.00 – Surety bond

City of Pismo Beach

Zoning

No restrictions are placed on fortune tellers for the City of Pismo Beach. They are not specifically listed in the city's municipal code.

- Considered part of the service industry
- Allowed in commercial zoning districts

City of Davis

Zoning

No restrictions are placed on fortune tellers for the City of Davis. They are not specifically listed in the city's municipal code.

- Considered a personal service
- Allowed in commercial zoning districts and in mixed use zones

City of Santa Maria

Zoning

No restrictions are placed on fortune tellers for the City of Santa Maria. They are not specifically listed in the city's municipal code.

In 2006, the city repealed and deleted Title 4, Chapter 8 of the Code pertaining to fortunetelling and similar occupations. This section was adopted in 1941 and had not been revised or amended since that time. The ordinance required an individual to appear before the City Council at a regular meeting to make application for a license and required a \$15.00 per month fee.

In 1985, California Supreme Court ruled fortunetelling constituted speech and was entitled to constitutional protections. By adopting the recommended repeal, the Council demonstrated intent to treat fortunetelling the same as other businesses & deleted an outdated and probably illegal portion of the current law.

FOR REFERENCE

Current Code for Paso Robles

5.16.010 District and building regulations

- A. DISTRICTS PROHIBITED. Fortunetelling, clairvoyance, astrology, palmistry, phrenology, card reading, cartomancy, crystal gazing, mediumship prophesy, augury, divination, magic, hypnotism and necromancy shall not be conducted in any house or building in any R Districts or C-1 or C-2 Districts, as defined by zoning ordinances of the city.
- B. TYPE OF BUILDING. Nor shall any such business or profession, as above described, be conducted in any district except in a building or house, and it shall be unlawful to conduct such business or profession by canvassing or soliciting on any public thoroughfare, or public place, or by soliciting from open doorways or windows by word or sign.

(Ord. 225 N.S. § 1 (part), 1959)

5.16.020 License—Application—Investigation

No license shall be granted for the conduct of any of the above described businesses or professions until the applicant for such license shall have presented a written application to the city council, which application shall contain the location at which the business or profession is to be carried on, and the location where the applicant has carried on business for the last five years previous to such application. It shall be the duty of the chief of police to investigate, through the proper authorities, all places mentioned in each application, and it shall be the duty of the chief of police to conduct any other reasonable investigation to determine the character of the applicant and his or her ability to maintain such business or profession in an orderly manner.

(Ord. 225 N.S. § 1 (part), 1959)

5.16.030 License fee

For the business of conducting any business as defined in this chapter the license shall be at the rate of thirty dollars per day.

(Ord. 415 N.S. § 6, 1978; Ord. 414 N.S. § 6, 1978; Ord. 225 N.S. § 2, 1959)

5.16.040 Penalty for violation

Any violation of this chapter shall constitute a misdemeanor, and any person found guilty thereof shall, upon conviction or plea of guilty, be punishable by a fine of not less than five dollars, or more than three hundred dollars, or by imprisonment in the jail of said city, or in the jail of the County of San Luis Obispo, for not more than three months, or by both such fine and imprisonment, and when a fine is imposed the judgment may direct that the defendant be imprisoned in said city jail, or in said county jail, till such fine is satisfied at the rate of two dollars per day.