



CITY COUNCIL AGENDA REPORT

MEETING DATE: August 18, 2009

ITEM NUMBER:

SUBJECT: AN URGENCY ORDINANCE TO EXTEND A TEMPORARY MORATORIUM ON NEW MASSAGE ESTABLISHMENTS AND NEW MASSAGE PRACTITIONER PERMITS

DATE: JULY 29, 2009

FROM: POLICE DEPARTMENT/FIELD OPERATIONS DIVISION

PRESENTATION BY: CLAY EPPERSON, LIEUTENANT (714) 754-5603

RECOMMENDED ACTION:

1. Approve an urgency ordinance of the City of Costa Mesa adopting an extension, for an additional 10 months and 15 days, of a moratorium on the issuance of any new, or expansion of any existing, massage establishment permits. This will extend the existing 45-day moratorium on new massage establishment permits and new massage practitioner permits.
2. Direct staff to review the application fees for processing of massage establishments and massage practitioners permits to ensure that the cost of processing applications for massage establishments and practitioners is fully recoverable.
3. Direct staff to review current massage regulations to better manage the presence of massage business in the City of Costa Mesa and to address the impact of new California State laws governing massage practitioners.

BACKGROUND:

There are 54 massage establishments currently in the City of Costa Mesa, not including massage services provided under the care of a chiropractor. Some of the massage establishments are completely legitimate and provide a desired service. History has shown, however, that some massage establishments are illegitimate fronts for prostitution. The City of Costa Mesa has adopted rigorous municipal codes to help regulate the massage establishments and practitioners with the goal of keeping illegitimate massage establishments out of the city. Despite the rigorous municipal codes, the City of Costa Mesa has a substantially higher concentration of massage establishments than neighboring cities.

The CMPD Special Enforcement Detail (SED) provides directed enforcement against career criminals, significant crime problems, and narcotics enforcement. It is also tasked with the responsibility of providing vice enforcement in the City. To accomplish this, SED must target on-street prostitution, outcall prostitution, and prostitution operated out of business fronts. Because of the increasing number of massage establishments, the

regulation, inspection, and undercover verification and enforcement of massage establishments has grown into an extremely large task that could consume all of SED's available time. Currently, a Community Services Specialist (CSS) is dedicated full time to managing the processing of applications for massage establishments and practitioners. The workload for this position continues to increase.

In 2006, the City received 239 applications for massage related permits. In 2007, 262 applications were received, and in 2008, 305 applications. There were 176 applications by massage practitioners to change their license to allow them to work at other massage establishments in the City. The high number of practitioners who seek licensing to work at multiple massage establishments appears to be a function of the relatively high number of massage establishments in the City. The municipal code does not allow CMPD to charge a fee for the additional licensing to offset the substantial processing costs.

While some massage establishments are beneficial and completely legitimate, others have been problematic and have engaged in criminal enterprise. Some of the problems include:

- Ongoing prostitution under the guise of a massage business;
- Flagrant violation of the municipal code governing massage establishments;
- Citizen complaints regarding the concentration of massage establishments in specific areas;
- Citizen complaints regarding the proximity of massage establishments to residential areas and the impact on traffic, parking, noise and quality of life;
- The organized sale and utilization of fraudulent transcripts of massage training for purposes of obtaining a license;
- An organized, for profit, illegitimate group to assist massage applicants with the massage test;
- Falsified massage establishment and practitioner applications.

In September 2009, Section 4600 of the Business and Professions Code (Senate Bill 731) will become law and create a voluntary certification for the massage therapy profession. This bill will allow a State Board to license practitioners. However, regarding the massage establishments, it *“provides that duly authorized officials of the city have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.”*

In response to these concerns, on July 7, 2009, Council approved an urgency ordinance placing a 45 day moratorium on the massage industry, preventing the issuance of any new massage practitioner, manager, or establishment licenses. Exceptions were made for practitioners that were replacing any practitioners that had left an existing establishment. The proposed moratorium extension ordinance will prohibit the establishment of any massage establishment and/or the expansion of existing massage establishments for an additional period of ten months and fifteen days from the initial 45-day period. The moratorium will need to be extended as needed until such time as staff is able to develop and bring forward appropriate code amendments, and for those amendments to take effect. Without adoption of this ordinance, properties in the City of Costa Mesa could receive entitlements on massage establishments, expand existing establishments and unqualified persons could obtain permits to operate as massage practitioners.

On August 4, 2009, City Council reviewed and issued an update report of the staff's actions since the implementation of the moratorium. Additionally, Council exempted two massage establishments from the moratorium: Golden Lavendar and Spa and Tek Salon and Spa.

ANALYSIS:

While the City of Costa Mesa has embarked upon a course of strict regulation of massage establishments, surrounding cities have been more aggressive in limiting the presence of massage establishment in their respective cities. As a result, Costa Mesa currently has significantly more massage establishments than surrounding cities.

The approach to limit the number of massage establishments taken by other cities varies widely. Santa Ana has maintained a moratorium on massage establishments for over a year and a half by renewing a similar moratorium. Huntington Beach has limited the number of massage establishments to ten. Irvine has used zoning to confine massage establishments to non-residential areas, but they are reporting an increase in license applications. Newport Beach has used a regulatory process similar to Costa Mesa but they have allowed the decision makers to use more discretion in allowing or disallowing massage permits. As an example, Costa Mesa essentially requires a prior conviction for misconduct to deny a permit while Newport's code allows denial based on a totality of circumstances that suggest the business would not be operated in the best interests of the City and the public.

A review of internet advertisements for massage services can provide a more qualitative perspective of the problem in Costa Mesa. Massage service providers will advertise under "therapeutic services" and some advertise under "adult services." Some businesses hint or imply that sexual services may be procured. Others clearly suggest that sexual services are available. Many prostitutes working in the region openly advertise in the adult services section along with some of the massage providers. A review of these advertisements demonstrates that Costa Mesa appears over-represented in the offering of legitimate and illegitimate massage services. In comparison, there are virtually no advertisements for Newport Beach which has many massage practitioners but few stand alone massage establishments.

Some provisions of the Costa Mesa Municipal Code, specifically Title 9, Article 22 (which deals with massage establishments and practitioners) need review, study, and possible revision in order to respond to the recently enacted legislation, as well as to address concerns relating to the current impacts of massage establishments and the potential of a large influx of new massage establishments in our City. Additionally, the City's Zoning Code allows massage establishments as a permitted use in commercially-zoned properties. The Zoning Code also requires an on-site parking requirement of 6 spaces for every 1,000 square feet of floor area, which is comparable to medical uses.

During the moratorium period, staff will be reviewing potential amendments to the Zoning Code to apply additional requirements and/or restrictions for massage establishments. Issues to consider include (but are not limited to) the following:

- *Ensure that Code amendment also complies with State Law.* The intent of Senate Bill 731 is to prohibit requirements for massage establishments from being more restrictive

than requirements for other professional and personal service businesses (Business and Professions Code Section 4612(B)(4).

- *Address public nuisance activities.* Staff will evaluate potential changes to the public nuisance provisions of the Zoning Code. For example, if the City declares an existing facility as a public nuisance, the massage establishment shall be subject to a CUP. If a CUP is not obtained, legal proceedings would take place to close the establishment.
- *Require a CUP for certain massage establishments.* Staff will determine the appropriate application of the CUP requirement for new and existing massage establishments. The CUP requirement shall be applied under certain physical and operational characteristics. This would allow the City to impose restrictions on the business activities through the CUP process. The business shall be subject to annual compliance review through the CUP process, and there will be an ability to revoke the CUP, if necessary.
- *Develop development standards and conditions of approval.* Staff will recommend new development standards and conditions to better regulate massage establishments. These may include a limitation in the number of massage practitioner licenses per establishment, depending on the total square footage of the lease area. Hours of operation may be restricted depending on the proximity to sensitive uses.
- *Consideration of a buffer zone to avoid overconcentration.* Staff will evaluate whether massage establishments should be subject to a specified distance requirement from another massage establishment.

Although a 45-day moratorium was granted on July 7, 2009, all of the factors cited as justification for the initial moratorium continue to create the need for an extended moratorium. During the extended timeframe, staff will study, develop and implement improved municipal codes to help manage the presence of legitimate massage business and limit the ability of illegitimate massage business to operate in the City of Costa Mesa.

ALTERNATIVES CONSIDERED:

None.

FISCAL REVIEW:

No immediate fiscal impact due to the moratorium. It is anticipated that there could be a reduction in employee hours dedicated to the processing of permits and for hearings on denied permits.

LEGAL REVIEW:

Legal has prepared the attached Urgency Moratorium Extension Ordinance for Council's consideration and action. The urgency ordinance must receive a 4/5th vote to take effect, and would take effect immediately if adopted.

CONCLUSION:

The City Municipal Codes governing Massage establishments and practitioners are onerous for legitimate massage establishments and practitioners, but they have not successfully deterred illegitimate businesses. The existing 45-day moratorium on new

massage establishments and new massage practitioners will end on August 20, 2009. All the factors creating the urgency for the moratorium still exist. Police Department staff strongly supports and recommends the 10-month and 15-day extension of the moratorium on the issuance of any new or expansion of any existing massage establishment permits, or the issuance of any new (non-replacement) massage practitioner permits.

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Attachment 1: [Ordinance](#)