

ORDINANCE NO. 09-

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF COSTA MESA, CALIFORNIA EXTENDING
FOR A PERIOD OF TEN (10) MONTHS AND FIFTEEN (15)
DAYS AN EXISTING 45 DAY CITY-WIDE MORATORIUM
ON THE APPROVAL OF ANY BUSINESS LICENSE, USE
PERMIT, OR ANY APPLICABLE APPLICATION RELATED
TO MASSAGE ESTABLISHMENTS AND/OR MASSAGE
PRACTITIONERS**

WHEREAS, the City of Costa Mesa General Plan was adopted in January 2002, and it embodies the community's long-range vision of providing for the balanced development of a diverse mix of commercial goods and services and employment opportunities in consideration of the needs of the business and residential segments of the community; and

WHEREAS, a high concentration of massage establishments exists in specific areas of the City; and

WHEREAS, the growing number of massage establishments and associated massage practitioners in the city has increased staff workload for licensing, inspection, and enforcement for massage related issues; and

WHEREAS, the City recognizes that while many massage establishments are legitimate businesses, the Costa Mesa Police Department has reported the following ongoing problems at several massage establishments:

1. Ongoing prostitution under the guise of a massage business;
2. Flagrant violation of the Costa Mesa Municipal Code governing massage establishments;
3. Citizen complaints regarding the concentration of massage establishments in specific areas;
4. Citizen complaints regarding the proximity of massage establishments to residential areas and the associated impact on traffic, parking, noise, and quality of life;
5. The organized sale and utilization of fraudulent transcripts of massage training for purposes of obtaining a license;
6. An organized, for profit, cheating scam to assist applicants in cheating on the massage tests; and
7. Falsified massage establishment and practitioner applications; and

WHEREAS, new State laws instituted under Section 4600 of the California Business and Professions Code (SB 731) governing massage establishments will become effective in September of 2009. While the full impact of the new regulations is not entirely clear, there will be significant changes in how massage practitioners and

establishments will be licensed, zoned and permitted. The City of Costa Mesa Municipal Code needs to be reviewed and revised to reflect the new state law covering massage enterprises and practitioners; and

WHEREAS, the Costa Mesa Police Department has requested a moratorium to reevaluate the Costa Mesa Municipal Code in regards to the revising and strengthening the code to curtail illegitimate and criminal operations within the City and to consider an appropriate fee structure to offset the cost of processing the massage permits, licensing, and inspection. Additionally, complaints from citizens suggest that the City's zoning regulations of massage establishments adjacent to residential neighborhoods needs to be evaluated in regards to the potential for negative impacts on the residents' quality of life; and

WHEREAS, the City's current Zoning Code does not require a discretionary review for massage establishments and practitioners that would include evaluation of impacts to surrounding properties and ensure that such activities are occurring in appropriate locations; and

WHEREAS, City staff has indicated that time is needed to conduct comprehensive studies and public hearings relating to the issue of massage establishments and practitioners, in order to adequately determine information such as, but not limited to, the following: (1) whether such activity should be subject to discretionary review processes, (2) whether development standards and/or conditions of approval, which do not now exist, should be implemented for such activity, (3) whether processing fees should be adjusted to correlate with the amount of staff time required to process a request, (4) whether massage establishments should be subject to a specified distance requirement from another massage establishment or other zoning requirements; and (5) whether the public nuisance provisions of the Zoning Code should be amended to account for massage establishments declared as nuisances; and

WHEREAS, the City Council adopted a forty-five (45) day moratorium on new massage establishment permits and new massage practitioner permits that became effective on July 7, 2009 and is set to expire on August 20, 2009, by urgency ordinance; and

WHEREAS, the City Council approved and issued a report at its meeting of August 4, 2009 regarding the steps taken by City staff to address the conditions which led to the adoption of the urgency moratorium on July 7, 2009; and

WHEREAS, the City Council held a public hearing on August 18, 2009 to consider the moratorium, circumstances giving rise to it, and its possible extension; and

WHEREAS, the same factors that served as justification for the initial 45-day moratorium still exist and it can be foreseen that they will continue to exist for an extended period of time; and

WHEREAS, the Costa Mesa City Council finds, determines, and declares that the current and immediate threat to the public health safety and welfare of the city and its citizens necessitates the immediate enactment of the ordinance. The facts constituting such urgency are set forth above; and

WHEREAS, the City Council finds that an extension of the moratorium temporarily prohibiting, the issuance of and/or approval by City staff of any approval, license, permit or other applicable entitlement which would allow for new massage businesses or expansion or intensification of massage businesses, or the granting of permits for new massage practitioners, except for those who are necessary to replace leaving employees or contractors of existing businesses, would best serve the public health, safety, and welfare, while the City conducts necessary research into the possible means and methods of addressing the serious problems identified in these findings and to address the new legal requirements set out in SB 731 while ensuring that the interests of existing businesses and residents are balanced against the needs of new businesses seeking to enter the massage establishment or practitioner business and the health, safety, peace and welfare of both residents and visitors to the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY ORDAINS AS FOLLOWS:

SECTION 1:

1. In order to protect against this current and immediate threat to the public health, safety, and welfare and pursuant to the provisions of California Government Code Section 65858, the previously enacted moratorium adopted July 7, 2009 is extended for a period of ten (10) months and fifteen (15) days as to the following:
 - a. No new massage establishment whether as a primary use or an ancillary use shall be established, constructed, or permitted in the City of Costa Mesa, except as allowed by the Costa Mesa City Council on August 4, 2009.
 - b. No existing massage establishment in the City of Costa Mesa shall be expanded, whether by means of addition of space, construction of a new facility or by reconfiguration.
2. No new massage practitioner permit shall be issued in the City of Costa Mesa except (a) that the City may issue a massage practitioner permit to a qualified employee or independent contractor who will be employed at any currently permitted massage establishment to replace a permitted massage practitioner who has left the employ of the permitted establishment and (b) as allowed by the Costa Mesa City Council on August 4, 2009.
3. This moratorium extension shall be effective immediately upon adoption, but may be extended after notice, pursuant to California Government Code Section 65090, and a public hearing, for an additional period of no more than one (1) year, if findings are

made that there remains a current and immediate threat to public health, safety, or welfare, pursuant to California Government Code Section 65858(c).

4. This urgency is based on the following facts:
 - a. The enactment of SB 731, scheduled to take effect on September 1, 2009 has made substantial changes to California law on the subject of permitting massage establishments and practitioners and staff needs time to assess these changes and make code revisions to account for them;
 - b. While some massage establishments are legitimate, many have been shown to be fronts for prostitution;
 - c. There are significant pockets of concentration of massage establishments in Costa Mesa, and staff needs time to assess whether distance requirements or other zoning restrictions are necessary and appropriate to protect residential uses from negative impacts caused by such concentration, such as traffic, noise, parking problems, and illegal behavior;
 - d. There exists schemes for the organized sale and utilization of fraudulent transcripts of massage training for purposes of obtaining a license;
 - e. There are organized, for profit, cheating scams to assist applicants in cheating on the massage tests required to obtain a license; and
 - f. The police department has identified a number of falsified massage establishment and practitioner applications

5. Definitions: For the purposes of this ordinance the following terms shall be defined as follows:
 - a. "Massage" means any method of treating the external parts of the human body for remedial, health, hygienic, relaxation or any other reason or purpose, whether by means of pressure on, friction against or stroking, kneading, tapping, pounding, vibrating, rubbing or any other manner of touching external parts of the human body with the hands, or with the aid of any mechanical or electrical apparatus or appliance, with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, ointment or other similar preparations commonly used in this type of business or trade.
 - b. "Massage establishment" shall be defined as that term is defined in Section 9-324(l) of the Costa Mesa Municipal Code.
 - c. "Massage practitioner" shall be defined as that term is defined in Section 9-324(m) of the Costa Mesa Municipal Code.
 - d. "Primary use" shall mean a use that is not an ancillary use.
 - e. "Ancillary use" shall be defined as massage performed in any business that has or provides other types of services as a primary function.

SECTION 2: ENVIRONMENTAL DETERMINATION. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt.

SECTION 3: INCONSISTENCIES. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

SECTION 4: SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5: APPLICABILITY. The provisions of this ordinance shall be applicable to the licensing of new massage establishments or massage practitioners. The provisions of this ordinance shall not be applied to any licenses or permits issued to massage establishments or practitioners approved prior to the effective date of this ordinance.

SECTION 6: PUBLICATION. The City Clerk shall certify to the passage and adoption of this ordinance, by at least a four-fifths vote of the City Council, and shall cause the ordinance to be published in the manner required by law. This ordinance shall become effective immediately from and after its passage.

PASSED AND ADOPTED this _____ day of _____ 2009.

ALLAN R. MANSOOR
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 09-__ was introduced and considered section by section and thereafter passed and adopted as a whole as an urgency ordinance at said regular meeting of said City Council held on the ____ day of _____, 2009, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2009.

City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa