



CITY COUNCIL AGENDA REPORT

MEETING DATE: June 1, 2010

ITEM NUMBER:

SUBJECT: MORATORIUM ON THE ISSUANCE OF ANY MASSAGE ESTABLISHMENT, MANAGER, AND/OR PRACTITIONER LICENSE: STAFF ACTION REPORT

DATE: MAY 13, 2010

FROM: POLICE DEPARTMENT/DEVELOPMENT SERVICES

PRESENTATION BY: LES GOGERTY, CAPTAIN (714) 754-5190

RECOMMENDED ACTION:

Staff recommends that City Council take the following action:

1. Receive and file this report.

BACKGROUND:

At the August 18, 2009, City Council meeting, the Council approved an extension of the urgency ordinance adding an additional 10-month, 15-day moratorium on the massage industry in the city, preventing the issuance of any new massage practitioner, manager, or establishment licenses, with limited exceptions for replacement workers. The purpose of this report is to update Council on staff's actions since the passage of the extension to the moratorium.

UPDATES:

Since the moratorium extension was approved by Council, staff has been reviewing and assessing potential modifications and enhancements to the City's massage ordinance. This has been in accordance with the newly established guidelines outlined in Senate Bill 731, which was implemented into law in September of 2009. Since this new law has taken effect, law enforcement has recognized a wide array of concerns, which has resulted in the California Police Chiefs Association sponsoring Assembly Bill 1822 (Swanson). The Association believes the California Massage Therapy Council, a non-profit organization that is functioning as a quasi-governmental agency, does not have the resources to do thorough background investigations of applicants for the state license. It is also their opinion the system has already been and will continue to be abused by inappropriate and/or improperly trained applicants slipping through the cracks. In a report from the California Police Chiefs Association to Assemblyman Swanson it states, "We recently did a random/regional sample of California Massage Therapy Council applicants and found that 57% were known prostitutes, 32% were of unknown legitimacy and required further inquiry, and only 11% were legitimate." Due to this new pending legislation, staff will need additional time to assess and evaluate the impact it may have on pending revisions and modifications to the municipal code.

Review of Assembly Bill 1822

This is an urgency bill tentatively scheduled to go before the Assembly in June 2010 as the result of state-wide concern that Business and Professions Code 4600 has left local jurisdictions without adequate protection against illegitimate massage technicians and operators engaged in prostitution and other illegal activity. The bill is intended to 1) clarify the law to make it clear the intent of B&PC 4600 is to give local jurisdictions the power to issue, oversee and/or revoke the permit of a massage establishment that is engaging in unprofessional or illegal conduct; and (2) allow local municipalities to require those administering massage in their jurisdictions to pass a background check with the applicant paying the reasonable costs associated with a background investigation prior to a state recognized massage certificate being issued.

Status of Zoning Code Revisions

Currently, massage establishments are a permitted use in commercially-zoned properties under the City's Zoning Code. During the moratorium period, planning staff contacted surrounding cities and obtained their Zoning Code provisions for massage establishments. Based on this information, staff is working on the following revisions to Title 13 (Zoning Code) as it pertains to massage establishments.

- Require a conditional use permit (CUP) for new massage establishments in all commercially-zoned properties. The CUP requirement would ensure that new establishments comply with specific provisions for their operation including, but not limited to, the following: (1) required training and appropriate documentation for massage technicians; (2) appropriate clothing and identification for massage technicians; (3) prohibiting all activities of a sexual nature; (4) requiring massage establishment to be maintained in a clean and sanitary condition; (5) non-lockable doors within the establishment; and (6) appropriate hours of operation. The CUP requirement would not apply to massage that is part of a physical fitness facility, hotel, or medical or chiropractic offices (in those instances they would be permitted as an incidental use, subject to a maximum of one or two massage practitioners).
- Establish a one-year amortization period for existing massage requirements to obtain a CUP. The purpose of this requirement is to bring the existing massage establishments into compliance with the operating conditions discussed above through the CUP process.
- Require a CUP for existing massage establishments that expand or modify their operation. This would be an additional mechanism to bring existing establishments into compliance with the operating conditions discussed above. A similar provision exists for establishments that sell alcoholic beverages that expand or modify their operations.
- Amend the code declaring massage establishments that do not conform to the Zoning Code or CUP provisions to be a public nuisance. This requirement would allow the City to initiate proceedings to either revoke a CUP for a massage establishment if it is determined to not be in compliance, or shut down a massage establishment if they do not obtain a CUP.

The Zoning Code amendments will be brought forward for Planning Commission and City Council consideration in conjunction with the other Municipal Code amendments.

CONCLUSION:

Staff recommends that Council receive and file this report. Staff will return to Council on June 15, 2010 with recommendations regarding the extension of the moratorium.

CHRISTOPHER SHAWKEY

Chief of Police

KIMBERLY HALL BARLOW

City Attorney

DISTRIBUTION: City Manager
 City Attorney
 Finance Director
 City Clerk
 Development Services Director