



CITY COUNCIL AGENDA REPORT

MEETING DATE: JULY 5, 2011

ITEM NUMBER: _____

SUBJECT: REVISION TO THE MASSAGE ORDINANCE

DATE: JUNE 20, 2011

FROM: POLICE DEPARTMENT

PRESENTATION BY: MARK MANLEY, POLICE LIEUTENANT
ELENA GERLI, DEPUTY CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: Mark Manley (714) 754-5043
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RECOMMENDATION:

Staff recommends that the City Council adopt the attached Massage Ordinance.

BACKGROUND:

In 2009, new provisions of the Business & Professions were enacted, (Bus. & Prof. Code § 4600 et seq.), which provide for voluntary certification for massage practitioners. The new law's purpose is to make it easier for individual massage practitioners who hold this certification to practice their craft throughout the State of California.

The provisions of the Business & Professions Code set standards that practitioners must meet to obtain certification, require background checks, and outline certification revocation procedures. The certifications are issued by a nonprofit organization called the California Massage Therapy Council (CAMTC).

The new law prohibits cities from requiring any additional permit for an individual to practice massage and it prevents cities from creating zoning restrictions that are more onerous on massage establishments than for any other professional service business. The statute does give the city the authority to enact reasonable provisions to ensure the health and safety of patrons. The statute does not appear to prevent the city from requiring a massage establishment permit process.

ANALYSIS:

In large part due to the new law, a number of provisions of the current massage city ordinance are not enforceable.

In developing the ordinance before the City Council, staff strove to bring the City's regulations into compliance with the new state laws, and to enhance the City's ability to take action against massage establishments conducting illicit activities on their premises, which have been a growing concern for the Police Department.

The intent of the massage ordinance is to protect and maintain the integrity of legitimate massage establishments already in existence in the City of Costa Mesa.

Staff obtained input from massage professionals and business owners throughout the city and the County of Orange, as well as from CAMTC staff. In fact, our city staff has been instrumental in providing CAMTC with guidance and recommendations on how to make the certification process more efficient and providing information on the importance of keeping municipalities and law enforcement agencies engaged with decisions that affect the communities that they serve.

Notices of this public hearing have been sent to all permitted massage establishments and chiropractors who employ massage practitioners who currently hold a city issued permit to practice massage.

The proposed ordinance would effect the following general changes from the City's existing massage regulations:

- Within 180 days of the effective date of the ordinance, no person may practice massage without a CAMTC certificate.
- City registration and identification required for any certified individual to practice massage in the city.
- Massage establishments will be required to obtain a permit, and the permit may be revoked if the establishment violates the requirements of the new ordinance. The application requires extensive information be provided to the city, and requires background checks for prospective owners.
- The ordinance provides administrative procedures to revoke or suspend an establishment permit. The procedures are more streamlined than the public nuisance procedures in Sec 20-12 et seq.

The proposed ordinance would continue most of the operating, physical facility, and health and safety regulations and would add several new requirements as follows:

1. The ordinance has been reorganized for ease of reference.
2. A number of definitions have been added.
3. Massage Establishments adjacent to "R" zones must close at 9 p.m., instead of 10 p.m.
4. Advertising restrictions that require the establishment permit number (or CAMTC certificate number) to be displayed, and which prohibit ads that suggest that services other than therapeutic massage will be offered.
5. Revision of the clothing requirement so that skirts and dresses may not be worn by the practitioners.
6. Front lobby windows cannot be covered.

7. Mandatory registration of CAMTC certificates and implementation of a registration fee, issuance of a “registration certificate” and City issued identification badge that must be worn while working and performing massage.
8. Fees to obtain an establishment permit, as well as to obtain a city registration and photo identification for the individual practitioners shall be established by council resolution.
9. Certified practitioners who have consistent good-standing employment in the city will have the option to have their registration fees waived every third year if they provide proof of ten massage related continuing education units obtained during the previous 12 months.
10. All massage establishments and certified massage practitioners and therapists will be required to comply within 180 days of implementation.
11. Insurance will be required of all practitioners and establishments.

ALTERNATIVES CONSIDERED:

The City Council can consider all or none of the proposed changes, or retain the Municipal Code as it is currently written.

FISCAL REVIEW:

The adoption of this amendment to the Massage Ordinance will have minimal fiscal affect on the City. The primary intent of the changes to the ordinance is to enhance the enforcement of current laws and not necessarily the generation of general fund revenues. The extra revenue generated would be from additional registration fees and permits required by the Police Department.

LEGAL REVIEW:

The City Attorney’s Office has been involved in the preparation of the proposed amendments to the Massage Ordinance and has reviewed and approved the attached ordinance “as to form.”

CONCLUSION:

The Police Department has found a need for modifications to the current massage ordinance to better equip the Police Department with the tools necessary to address the various concerns, which have been found by the Police Department during our regular and undercover investigations of massage establishments. The purpose of the various changes is to bring the massage ordinance current with State law and to protect the public safety, health and welfare, to help eliminate or reduce prostitution and eliminate various loopholes, which have allowed or caused a number of problems to exist. These proposed changed would also allow the Police Department to more easily monitor massage businesses and enforce the intent of this ordinance.

Staff recommends that the City Council adopt the attached ordinance regarding massage establishments and massage practitioners.

THOMAS R. HATCH
CHIEF EXECUTIVE OFFICER

DENNIS KIES
INTERIM POLICE CHIEF

THOMAS DUARTE
CITY ATTORNEY (legal review only)

MARK MANLEY
LIEUTENANT

DISTRIBUTION: Acting Development Services Director Khan Nguyen
 Chief of Code Enforcement Willa Bowens-Killeen
 Captain Les Gogerty
 Sergeant Scott May

ATTACHMENTS: [Proposed Massage Ordinance 11-](#)