

City of Culver City, California
Agenda Item Report

Meeting Date: 04/13/2015

Item Number: A-1

CITY COUNCIL AGENDA ITEM: FOUR-FIFTHS VOTE REQUIREMENT – Adoption of an Ordinance Establishing a Citywide 45-Day Moratorium on the Issuance of Any New Permit, License, Approval or Entitlement Pertaining to New Massage Establishments or the Location or Relocation of Existing Massage Establishments Within the City, and Declaring the Urgency Thereof and that it Shall Take Effect Immediately.

Contact Person/Dept.:	Phone Number:
Lisa Vidra/City Attorney	310-253-5660
Thomas Gorham/Planning Division	310-253-5710

Fiscal Impact: Yes ☐ No ☒ General Fund ☐

Public Hearing: ☐ Action Item: ☒ Attachments: ☒

Public Notification: (E-Mail) Meetings and Agendas – City Council (04/08/15)

Departmental Approval:
Carol Schwab (04/07/15)
Sol Blumenfeld (04/07/15)

City Attorney Approval:
Carol Schwab (04/07/15)

Chief Financial Officer Approval:
Jeff Muir (by M. Noller) (04/08/15)

City Manager Approval:
John M. Nachbar (04/08/15)

RECOMMENDATION:

Staff recommends the City Council adopt an Ordinance establishing a Citywide 45-day moratorium on the issuance of any new permit, license, approval or entitlement pertaining to new massage establishments or the location or relocation of existing massage establishments within the City, and declaring the urgency thereof and that it shall take effect immediately. **(This item requires a four-fifths vote.)**

BACKGROUND:

In 2008, Senate Bill 731 ("SB 731") was adopted by the California Legislature and signed by the Governor. It became effective on January 1, 2009, enacting Business and Professions Code §4600 *et seq.*, which preempted many local controls relating to massage therapy and massage establishments. SB 731 also provided for the certification and oversight of massage practitioners and massage therapists by a non-profit entity named the California Massage Therapy Council ("CAMTC"). SB 731 also shifted professional licensing from local governments to the CAMTC. Certificates issued by the CAMTC to qualified applicants entitled the holder to practice massage therapy anywhere in the State, without the necessity of complying with certain local rules. In 2011 and 2012, additional amendments were made to the various provisions of Business and Professions Code § 4600 *et seq.*, further limiting the City's ability to regulate massage establishments.

Throughout the state, cities have reported that these state laws had the unintended consequence of resulting in a proliferation of massage establishments throughout

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California, many of which were or are believed to be fronts for prostitution and or human sex trafficking.

The Culver City Police Department (CCPD), the Enforcement Services Division of the Community Development Department, and the Business Tax Division of the Finance Department have all received complaints of suspected illicit activity occurring at massage establishments located in the City. CCPD and Enforcement Services investigations reveal that a number of local massage establishments are advertised or reviewed online in the adult entertainment section of rubmaps.com, backpage.com, and mpreviews.com, strongly suggesting illicit activity. Also, over the past several years, CCPD has investigated several local massage establishments and made arrests for prostitution. Staff's enforcement efforts were able to effect the closure of two massage establishments where prostitution was occurring. Due to the complaints, illicit behavior and the suspected advertising of illicit activity, massage establishments require a higher level of scrutiny and enforcement than other businesses.

SB 731 sunset on January 1, 2015, and was replaced by AB 1147 ("Massage Therapy Act of 2014"), which provides local governments with renewed regulatory authority. Due to the new legislation and in order to ensure the City's business permitting regulations, land use regulations and zoning provisions are adequate, and that massage establishments will be regulated in a manner that protects the public and satisfies the policies, goals, and objectives of the General Plan, a thorough review and analysis of AB 1147 is necessary.

DISCUSSION:

With the passage of AB 1147, certain provisions of the current Culver City massage ordinance, found at Chapter 11.07 of the Culver City Municipal Code ("CCMC"), may conflict with the new state law. As a result of the January 1, 2015 effective date of AB 1147, it is urgent that the City undertake a review if its current massage regulations in order to determine how such regulations may be revised in order to be consistent with state law, while still providing comprehensive regulations for the establishment, use and operation of businesses offering massage services in the City, so that the public health, safety and welfare remain protected.

Staff needs time to study this issue and to prepare and present recommended regulations of these massage establishments to the City Council for its consideration. Based on the above, Staff recommends that for a period of 45 days from the date of adoption of the proposed ordinance, no permits, licenses or entitlements shall be accepted, no consideration of any application for a permit, license or entitlement shall be made, and no permit, license or entitlement shall be approved or issued for new massage establishments or the relocation of existing massage establishments. In addition, as included in the proposed ordinance, staff recommends that no existing massage establishment may expand, whether by means of additional space, construction of a new facility, or by reconfiguration. For the purposes of this moratorium, "massage establishment" has the same meaning as "massage business" in CCMC Chapter 11.07.

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If the City Council adopts the proposed ordinance, Staff will be directed to study and analyze issues related to the establishment, permitting and operation of massage establishments within the City, and the potential impacts of such facilities on the public health, safety and welfare of the community, the desirability of such facilities in various zones, and the extent of regulatory controls, if any, to impose on such facilities. Staff will then report back to the City Council, with its recommendations on proposed land use and operational regulations.

Legal Authority

The proposed ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA guidelines, California Code of Regulations, Title 14, Chapter 3, §15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and §15060(c)(3) [the activity is not a project as defined in §15378] because it has no potential for resulting in physical change to the environment, directly or indirectly; rather it prevents changes to the environment pending the completion of the contemplated review of massage establishments.

Government Code Section 65858 provides that an urgency ordinance may be adopted without prior public notice or public hearing by a four-fifths vote of the legislative body upon a finding that the action is required to protect the public safety, health and welfare. Such ordinance shall have no further force and effect 45 days from the date of its adoption. However, after notice and a public hearing, such ordinance may be extended for a period of ten months and 15 days, and subsequently extended for an additional 12 months. Not more than two extensions may be adopted.

Culver City Charter Section 614, provides additional authority for the City Council to adopt an ordinance as an urgency measure for preserving the public peace, health or safety by a four-fifths vote.

FISCAL ANALYSIS:

The adoption of the proposed ordinance would result in the City not collecting any business tax certificate fees or permit application fees for massage businesses. Because it is speculative to determine the exact number of applications the City may have received during the period of the moratorium, it is difficult to determine the fiscal impact at this time.

ATTACHMENTS:

Proposed Ordinance

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MOTION:

That the City Council:

Adopt an Ordinance establishing a Citywide 45-day moratorium on the issuance of any new permit, license, approval or entitlement pertaining to new massage establishments or the location or relocation of existing massage establishments within the City, and declaring the urgency thereof and that it shall take effect immediately. (This item requires a four-fifths vote.)