

**City of Culver City, California
Agenda Item Report**

Meeting Date: 05/26/15		Item Number: <u>PH-1</u>	
CITY COUNCIL AGENDA ITEM: PUBLIC HEARING AND FOUR-FIFTHS VOTE REQUIREMENT – Introduction and Adoption of an Interim Urgency Ordinance Extending for 10 Months and 15 Days the Temporary Moratorium, Established by Ordinance No. 2015-001, 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.			
Contact Person/Dept.: Thomas Gorham/Community Development; and Lisa Vidra/City Attorney		Phone Number: 310-253-5710; 310-253-5660	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☒ No ☐	
Public Hearing: ☒		Action Item: ☐ Attachments: ☐	
Commission Action Required: Yes ☐ No ☒		Date: _____	
Public Notification: (E-Mail) Meetings and Agendas – City Council (05/21/15); (Publication) Culver City News (05/14/15)			
Department Approval: Sol Blumenfeld (05/14/15) Carol Schwab (05/19/15)		City Attorney Approval: Carol Schwab (05/19/15)	
Chief Financial Officer Approval: Jeff Muir (by M. Noller) (05/20/15)		City Manager Approval: John M. Nachbar (05/21/15)	
<u>RECOMMENDATION:</u> Staff recommends the City Council introduce and adopt an interim urgency ordinance (Attachment 1) extending for 10 months and 15 days the 45-day temporary moratorium established by Ordinance No. 2015-001 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. <u>(This item requires a four-fifths vote.)</u> <u>PROCEDURE</u> 1. The Mayor seeks a motion from the City Council to receive and file the affidavits of publication and posting of notices and correspondence received in response to the public hearing notices; and, 2. The Mayor calls for a staff report; and, 3. The City Council poses questions to staff as desired; and,			

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4. Mayor seeks a motion to open the public hearing and invites public comments; and,
5. The Mayor requests a motion to close the public hearing; and,
6. The City Council discusses the matter and takes desired actions.

BACKGROUND:

The City's interest in regulating massage establishments relates to the unprecedented growth of such establishments in the City and the extensive resources invested in ensuring they comply with state and local laws. Since 2009, the City has seen a remarkable increase in the number of massage establishments, from six (6) to twenty-two (22). This growth coincided with the passage of Senate Bill 731 in 2008 and its successive amendments, which preempted many local controls relating to massage therapy, particularly in the areas of zoning and licensing of massage professionals. With this growth, the City has received and investigated a number of complaints related to suspected illegal activity at massage businesses, and at least 5 establishments were closed down by the City due to illegal activity on the premises. There is concern about associated negative impacts on the quality of life, the local economy, and the public trust.

Effective January 1, 2015, Assembly Bill 1147 vested cities with renewed authority to regulate massage establishments. On April 13, 2015, the City Council adopted Interim Ordinance No. 2015-001 establishing a 45-day temporary 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 (the "Moratorium") (Attachment 2).

The Moratorium was adopted to allow the City time to thoroughly review and study the new state law pertaining to local regulation of massage establishments, and to revise the City's Municipal Code, procedures, and fees related to massage establishments. This will enable the City to adequately and appropriately balance the rights of existing massage establishment operators and future applicants who wish to operate in the City with the preservation of the health, safety, and welfare of the community.

On May 11, 2015, consistent with the provisions of Government Code Section 65858(d), the City Council adopted a Resolution and issued a report on the actions and measures taken by the City since the adoption of the Moratorium to inform the existing massage establishment operators, future applicants who may

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wish to operate in the City, and the community on this matter (the "Report") (Attachment 3).

By its own terms, the Moratorium expires and will be of no further force and effect after May 27, 2015, unless extended by four-fifths vote of the City Council.

Provisions of the City's current laws, rules, procedures, and fees relating to the permitting and operation of massage establishments (the "Existing Regulations"), currently set forth in the Culver City Municipal Code (CCMC) in Chapter 11.07, "Massage Businesses," need review, study, and revisions in order to protect the health, safety, and welfare of the community. Those revisions will likely result in the City amending and adding provisions to Title 11 as well as Title 17, the Culver City Zoning Code.

Without the extension of the Moratorium on the permitting of massage establishments, the City may be required to continue to process applications for new massage establishments despite the fact the Existing Regulations are in need of updating. There are already 22 massage establishments operating in the City under permits previously issued.

DISCUSSION:

Review and Study of New State Law and Existing Regulations:

As set forth in the Report, since the adoption of the Moratorium, the City has continued its work to analyze state law and the City's current massage ordinance. City staff from the Treasury Division of the Finance Department, the Planning Division and Enforcement Services Division of the Community Development Department, the Police Department, and the City Attorney's Office met to explore options regarding possible revisions to the City's Code and to review processes related to massage establishments in other nearby cities. Staff is also analyzing the materials issued by the League of California Cities on implementing the new state law and comparing those recommendations with certain information released by the California Massage Therapy Council to ascertain possible conflicts between the positions of the two entities.

The City also continues to study possible revisions to the CCMC, Title 17, Zoning, which would appropriately balance the rights of existing massage establishment operators and future applicants who wish to operate massage establishments within the City with the preservation of the health, safety, and welfare of the community. The study and review are not yet complete. Once completed, the draft land use amendments to the Zoning Code will be required to go through a

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review process, including consideration by the Planning Commission with a recommendation to the City Council.

Declaration of Urgency:

The extension of the Moratorium is necessary to preserve the quality of life and protect the health, safety, and welfare of the community. The 45-day Moratorium was enacted with the intention of giving staff adequate time to craft proper rules, criteria, and conditions of approval for massage establishments that are consistent with state law, including operating conditions and restrictions that would advance the public interest. A moratorium continues to be required and should be extended immediately by adoption of this urgency ordinance, because staff studies are incomplete and ongoing; the absence of this ordinance would create a serious threat to the orderly and effective implementation of any amendments to the CCMC or other related regulations which may be adopted by the City as a result of studying this issue, in that the operations and land use by massage establishments under the Existing Regulations may be in conflict with or frustrate the possible updates and revisions to the CCMC and other regulations.

In fact, since the adoption of the Moratorium, the City has received at least two inquiries from applicants who wish to open new massage establishments in the City which would increase the total number of massage establishments operating without adequate updates to the City's laws.

Moratorium:

If the City Council adopts the proposed Ordinance, the Moratorium will be extended through and including April 11, 2016, during which time 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, 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.

This Moratorium will allow the City time to continue its review, study, and revisions to the City's laws, rules, procedures, and fees related to massage establishments, which will enable the City to adequately and appropriately balance the rights of existing operators and future applicants with the preservation of the health, safety, and welfare of the community.

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Legal Authority:

Section 614 of the City Charter provides:

“Any ordinance declared by the City Council to be necessary as an urgency measure for preserving the public peace, health or safety and containing a statement of the reasons for its urgency may be introduced and adopted at any regular, adjourned, or special meeting if passed by a vote of at least four-fifths of its members.”

If enacted by a four-fifths vote of the City Council, the proposed Ordinance would take effect immediately and would continue in full force and effect through April 11, 2016 (unless repealed by the City Council).

The procedures set forth in Government Code Section 65858, which the City has followed for imposition and extension of the Moratorium, provide that after notice and a public hearing, a moratorium adopted by an urgency ordinance may be extended for 10 months and 15 days by a four-fifths vote of the City Council upon a finding the action is required to protect the public safety, health, and welfare. Pursuant to the procedures established by Section 65858, such moratorium would have no further force and effect 10 months and 15 days after of its adoption; and, after another notice and public hearing, such moratorium may be extended for an additional year.

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 Municipal Code review.

FISCAL ANALYSIS:

The adoption of the Ordinance would result in the City not collecting any permit application fees or business taxes for the opening of new massage establishments. 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.

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ATTACHMENTS:

1. Proposed Ordinance
2. Ordinance No. 2015-001
3. Resolution No. 2015-R025

MOTION:

That the City Council:

Introduce and adopt an interim Ordinance extending for 10 months and 15 days the 45-day temporary moratorium, established by Ordinance No. 2015-001, 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. (This item requires a four-fifths vote.)