

MEETING DATE: May 26, 2015

AGENDA ITEM : PUBLIC HEARING (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.

ATTACHMENTS

	<u>Pages</u>
1. Proposed Ordinance	1-5
2. Ordinance 2015-001	6-10
3. Resolution 2015-R025	11-14

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**THE CITY COUNCIL OF THE CITY OF CULVER CITY DOES HEREBY
FOLLOWS:**

The City Council of the City of Culver City hereby finds, determines and

B. Unless an extension of Ordinance No. 2015-001 is adopted, the Moratorium will terminate on May 27, 2015, and no new moratorium may thereafter be adopted; and

D. On May 11, 2015, at least ten (10) days prior to the adoption of this Ordinance, the City Council adopted Resolution No. 2015-R025, issuing a written report pursuant to Government Code section 65858(d), describing the measures taken to

1 alleviate the conditions which led to the adoption of the moratorium. Resolution No. 2015-
2 R025 and the accompanying report are incorporated herein by this reference; and

3 E. On May 26, 2015, the City Council held a duly noticed public hearing
4 to consider extending Ordinance No. 2015-001. The City Council has considered all
5 written and oral comments offered and finds that the conditions and findings recited in
6 Ordinance No. 2015-001 continue to exist and are incorporated herein by this reference;
7 and

8 F. In light of the recent enactment of Assembly Bill 1147, the City's
9 ordinance regulating massage establishments may be inadequate, and studies by City staff
10 are necessary in order to create proper rules, criteria and conditions of approval that are
11 consistent with state law. In particular, the City desires to study the extent to which the City
12 is permitted to regulate massage establishments, and what zoning, land use, design and
13 operating conditions and restrictions would advance the public interest; and

14 G. The City Council directs that all studies be pursued as expeditiously as
15 practicable. In order to prevent the frustration of said studies and the implementation
16 thereof, the public interest and the health, safety and welfare of the community requires the
17 immediate enactment of this Ordinance. The absence of this ordinance would create a
18 serious threat to the orderly and effective implementation of any massage or zoning
19 amendments in that further development of massage uses may conflict with or frustrate
20 contemplated revisions to the City's Municipal Code; and

21 H. Experiences in this City, and in other California cities such as
22 Thousand Oaks, Huntington Beach and San Gabriel, have demonstrated that some
23 massage uses, as currently regulated under state and local law, have objectionable
24 secondary effects upon immediately adjacent residential and commercial areas by
25 impacting neighborhood character, quality of life, and the local economy, by creating blight
26 and by compromising the public trust; and

1 I. Without this Ordinance, the City may issue entitlements to establish or
2 expand massage businesses, which may be contrary to the City Council's goals in enacting
3 this moratorium in the first instance to ensure the protection of the public health, safety and
4 welfare; and

5 J. The City Council finds that this is a matter of City-wide importance and
6 is not directed toward any particular parcel of property or proposed use; and

7 K. The City Council declares that there is a current and immediate threat
8 to the public health, safety and welfare, necessitating the immediate enactment of this
9 Ordinance; and

10 L. The findings set forth in this Section 1 are true and correct and are
11 adopted as the City Council's findings.

12 **SECTION 2. EXTENSION OF MORATORIUM.**

13 Based on the findings set forth in Section 1, the City Council hereby extends
14 the moratorium established by Ordinance 2015-001, for an additional term of ten (10)
15 months and fifteen (15) days, through and including April 11, 2016, subject to the terms
16 and provisions contained herein, unless superseded or rescinded by City Council or
17 extended pursuant to Government Code section 65858. During this extension period, no
18 application for a permit, license or entitlement shall be accepted, no consideration of any
19 application for a permit, license or entitlement shall be given, and no permit license or
20 entitlement shall be approved or issued for any new massage establishment or the
21 location or relocation of any existing massage establishment. In addition, no existing
22 massage establishment may expand, whether by means of additional space,
23 construction of a new facility, or by reconfiguration. For the purposes of this
24 moratorium, "massage establishment" shall have the same meaning as "massage
25 business" in CCMC Chapter 11.07.

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1 **SECTION 3. URGENCY MEASURE.**

2 Based on the findings set forth in Section 1, the City Council finds and
3 declares there is a current and immediate threat to the public health, safety and welfare of
4 the community and upon that basis has determined that an urgency ordinance pursuant to
5 the provisions of Government Code §65858 and Culver City Charter Section 614 is
6 warranted, and shall take effect immediately upon adoption by a four-fifths (4/5) vote of
7 the City Council.

8 **SECTION 4. LEGAL, OPERATIONAL AND PLANNING STUDY.**

9 City staff is directed to continue to study and analyze issues related to
10 the establishment, permitting and operation of massage establishments
11 within the City, and the potential impacts of such facilities on the public
12 health, safety and welfare of the community, the desirability of such
13 facilities in various zones, and the extent of regulatory controls, if any, to
14 impose on such facilities.

15 **SECTION 5. CEQA.**

16 The City Council finds that this Ordinance is not subject to the
17 California Environmental Quality Act ("CEQA") pursuant to CEQA guidelines,
18 California Code of Regulations, Title 14, Chapter 3, §15060(c)(2) [the activity will
19 not result in a direct or reasonably foreseeable indirect physical change in the
20 environment] and §15060(c)(3) [the activity is not a project as defined in §15378]
21 because it has no potential for resulting in physical change to the environment,
22 directly or indirectly; rather it prevents changes to the environment pending the
23 completion of the contemplated Municipal Code review.

24 **SECTION 6. EFFECTIVE DATE.**

25 Pursuant to Section 614 of the City Charter, this Ordinance shall be
26 introduced and adopted at one and the same meeting and shall become effective
27 immediately. This Ordinance shall be of no further force or effect upon the expiration of
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1 ten (10) months and fifteen (15) days from the date of adoption (April 11, 2015), unless
2 extended in accordance with California Government §65858.

3 **SECTION 7: SEVERABILITY.**

4 The City Council hereby declares that, if any provision, section, subsection,
5 paragraph, sentence, phrase or word of this Ordinance is rendered or declared invalid or
6 unconstitutional by any final action in a court of competent jurisdiction or by reason or any
7 preemptive legislation, then the City Council would have independently adopted the
8 remaining provisions, sections, subsections, paragraphs, sentences, phrases, or words of
9 this Ordinance.

10 **SECTION 8: PUBLICATION.**

11 The City Clerk shall certify as to the adoption of this Ordinance and, pursuant
12 to Sections 616 and 621 of the City Charter, prior to the expiration of fifteen (15) days
13 after the adoption, the City Clerk shall cause this Ordinance, or a summary thereof, to be
14 published in the Culver City News and shall post this Ordinance or a summary thereof in
15 at least three places within the City.

16 APPROVED and ADOPTED this _____ day of _____ 2015.

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19 _____
MICHEÁL O'LEARY, MAYOR
20 City of Culver City, California

21
22 ATTEST:

23
24 _____
MARTIN R. COLE
25 City Clerk

26 APPROVED AS TO FORM:

27 _____
CAROL A. SCHWAB
28 City Attorney

A15-00195

ORDINANCE NO. 2015-00 1

AN URGENCY ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, 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.

THE CITY COUNCIL OF THE CITY OF CULVER CITY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council of the City of Culver City hereby finds, determines and declares that:

A. Government Code §65858 provides that the City of Culver City, to protect the public health, safety, and welfare, may adopt as an urgency measure an interim ordinance prohibiting certain uses while the City studies those uses; and

B. 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; and

C. In 2008, Senate Bill 731 ("SB 731") was adopted by the California Legislature, and became effective on January 1, 2009, enacting Business and Professions Code §4600 *et seq.*, preempting many local controls relating to massage therapy and massage establishments, and providing for the certification and oversight of massage practitioners and massage therapists by a non-profit entity named the California Massage Therapy Council ("CAMTC"); and

D. In 2011 Assembly Bill 619, and in 2012 Senate Bill 1238, amended various provisions of Business and Professions Code § 4600 *et seq.*, further limiting the City's ability to regulate massage establishments; and

1 E. These state laws had the unintended consequence of resulting in a
2 proliferation of massage establishments throughout California, many of which were or are
3 illicit establishments believed to be fronts for prostitution and or human sex trafficking; and

4 F. City staff, including the Police Department, the Enforcement Services
5 Division of the Community Development Department, and the Business Tax Division of the
6 Finance Department have received complaints and continue to receive complaints of
7 suspected illicit activity occurring at massage establishments; and

8 G. A number of local massage establishments are advertised or reviewed
9 online in the adult entertainment section of rubmaps.com, backpage.com, and
10 mpreviews.com, strongly suggesting illicit activity; and

11 H. Over the past several years, the Culver City Police Department has
12 investigated several local massage establishments and made arrests for prostitution, and
13 City enforcement efforts were able to effect the closure of two massage establishments
14 where prostitution was occurring; therefore, massage establishments require a higher level
15 of scrutiny and enforcement than other businesses to ensure compliance with local and
16 state laws; and

17 I. The presence of illicit massage establishments changes the character
18 of neighborhoods, causes blight, and impacts the local economy, as legitimate businesses
19 do not want to locate next door to such illegal uses; and

20 J. Efforts to investigate illegal massage businesses take away from
21 other law enforcement duties and are a drain on City services in an era of limited budgets
22 and resources; and

23 K. Illicit massage establishments threaten the public health, safety and
24 welfare in that they operate as fronts for prostitution and potentially human trafficking
25 operations; and

26 L. Effective January 1, 2015, the Governor signed Assembly Bill 1147,
27 which returns to local governments the authority to more strictly regulate massage
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1 establishments, authorizing cities and counties to enforce their zoning and land use
2 requirements on massage establishments, even if the same requirements do not apply to
3 other professional services providers, and further gives local governments greater authority
4 to establish reasonable regulations to manage massage establishments in the best interest
5 of the individual community; and

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

14 N. City staff needs time to study this issue and to prepare and present
15 recommended regulations of these massage establishments to the City Council.

16 O. The findings set forth in this Section 1 are true and correct and are
17 adopted as the City Council's findings.

18 SECTION 2. MORATORIUM.

19 Based on the findings set forth in Section 1, the City Council hereby
20 establishes a 45-day moratorium from the date of April 13, 2015 through and including
21 May 27, 2015, during which period no application for a permit, license or entitlement shall
22 be accepted, no consideration of any application for a permit, license or entitlement shall
23 be given, and no permit license or entitlement shall be approved or issued for any new
24 massage establishment or the location or relocation of any existing massage
25 establishment. In addition, no existing massage establishment may expand,
26 whether by means of additional space, construction of a new facility, or by
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1 reconfiguration. For the purposes of this moratorium, "massage establishment" shall
2 have the same meaning as "massage business" in CCMC Chapter 11.07.

3 **SECTION 3. URGENCY MEASURE.**

4 Based on the findings set forth in Section 1, the City Council finds and
5 declares there is a current and immediate threat to the public health, safety and welfare of
6 the community and upon that basis has determined that an urgency ordinance pursuant to
7 the provisions of Government Code §65858 and Culver City Charter Section 614 is
8 warranted, and shall take effect immediately upon adoption by a four-fifths (4/5) vote of
9 the City Council.

10 **SECTION 4. LEGAL, OPERATIONAL AND PLANNING STUDY.**

11 City staff is directed to study and analyze issues related to the
12 establishment, permitting and operation of massage establishments within
13 the City, and the potential impacts of such facilities on the public health,
14 safety and welfare of the community, the desirability of such facilities in
15 various zones, and the extent of regulatory controls, if any, to impose on
16 such facilities.

17 **SECTION 5. CEQA.**

18 The City Council finds that this Ordinance is not subject to the
19 California Environmental Quality Act ("CEQA") pursuant to CEQA guidelines,
20 California Code of Regulations, Title 14, Chapter 3, §15060(c)(2) [the activity will
21 not result in a direct or reasonably foreseeable indirect physical change in the
22 environment] and §15060(c)(3) [the activity is not a project as defined in §15378]
23 because it has no potential for resulting in physical change to the environment,
24 directly or indirectly; rather it prevents changes to the environment pending the
25 completion of the contemplated Municipal Code review.

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

REPORT OF THE
COMMISSIONER OF THE
BUREAU OF CHEMISTRY
FOR THE YEAR 1900

CHICAGO, ILL.,
PUBLISHED BY THE
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1901

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY
REPORT OF THE
COMMISSIONER OF THE
BUREAU OF CHEMISTRY
FOR THE YEAR 1900



1 **SECTION 6. EFFECTIVE DATE.**

2 Pursuant to Section 614 of the City Charter, this Ordinance shall be
3 introduced and adopted at one and the same meeting and shall become effective
4 immediately. This ordinance shall be of no further force or effect upon the expiration of
5 forty-five (45) days from the date of adoption, unless extended in accordance with
6 California Government §65858.

7 **SECTION 7: SEVERABILITY.**

8 The City Council hereby declares that, if any provision, section, subsection,
9 paragraph, sentence, phrase or word of this Ordinance is rendered or declared invalid or
10 unconstitutional by any final action in a court of competent jurisdiction or by reason or any
11 preemptive legislation, then the City Council would have independently adopted the
12 remaining provisions, sections, subsections, paragraphs, sentences, phrases, or words of
13 this Ordinance.

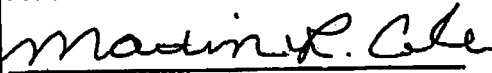
14 **SECTION 8: PUBLICATION.**

15 The City Clerk shall certify as to the adoption of this Ordinance and, pursuant
16 to Sections 616 and 621 of the City Charter, prior to the expiration of fifteen (15) days
17 after the adoption, the City Clerk shall cause this Ordinance, or a summary thereof, to be
18 published in the Culver City News and shall post this Ordinance or a summary thereof in
19 at least three places within the City.

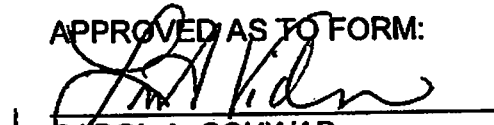
20 APPROVED and ADOPTED this 13 day of April 2015.

21 
22 MEGHAN SAHLI-WELLS, MAYOR
23 City of Culver City, California

24 ATTEST:

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26 MARTIN R. COLE
27 City Clerk

24 APPROVED AS TO FORM:

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26 CAROL A. SCHWAB
27 City Attorney

28 A15-00195

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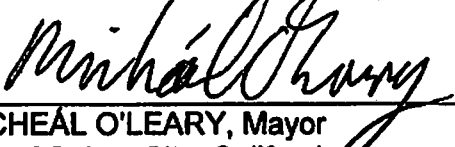
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1 establishment operators, future applicants who wish to operate a massage
2 establishment in the City, and the community well-informed on this matter.

3 NOW, THEREFORE, the City Council of the City of Culver City, DOES
4 HEREBY RESOLVE as follows:

5 The City Council approves and issues a "Report on Actions and Measures Taken
6 to Alleviate Conditions Which Led to The Adoption of Interim Ordinance No. 2015-001
7 Establishing a Temporary Moratorium on the Issuance of any New Permit, License,
8 Approval or Entitlement Pertaining to New Massage Establishments or the Location or
9 Relocation of Existing Massage Establishments within The City, and Declaring the
10 Urgency Thereof," which Report is attached hereto as Exhibit "A" and incorporated
11 herein by this reference.

12
13 APPROVED AND ADOPTED this 11th day of May 2015.

14 
15 MICHEAL O'LEARY, Mayor
16 City of Culver City, California

17 ATTEST:

18 
19 MARTIN R. COLE, City Clerk

APPROVED AS TO FORM:

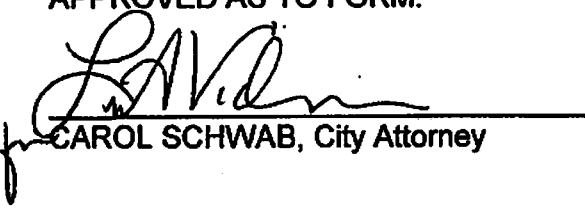
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21 CAROL SCHWAB, City Attorney
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EXHIBIT "A" TO RESOLUTION NO. 2015-R 025

**REPORT OF THE CITY COUNCIL
OF THE CITY OF CULVER CITY**

**REPORT ON ACTIONS AND MEASURES TAKEN TO ALLEVIATE
CONDITIONS WHICH LED TO THE ADOPTION OF INTERIM
ORDINANCE NO. 2015-001 ESTABLISHING A 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**

On April 13, 2015, the City Council of the City of Culver City adopted Interim Ordinance No. 2015-001 (the "Ordinance"), 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 Ordinance was adopted pursuant to Section 614 of the City Charter and Section 65858 of the California Government Code, in order to allow the City time to thoroughly review the new state law and its implications, and study and revise the City's laws, rules, procedures and fees related to massage establishments. The Ordinance will expire by its own terms on May 27, 2015. The City is reviewing whether there is a need to extend the Ordinance, prior to its expiration, in order to protect the public health, safety and welfare. The City Council will consider such extension at its May 26, 2015 meeting.

Since the adoption of the Ordinance, the City has continued its work to analyze state law and the City's current ordinance. City staff from the Planning Division, Code Enforcement Services, the Police Department and City Attorney's office met to discuss 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 Culver City Municipal Code, 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 review process, including consideration by the Planning Commission with a recommendation to the City Council.

This Report is issued in accordance with Government Code § 65858(d), which requires the City Council, 10 days prior to the expiration of the Ordinance or any extension, to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the Ordinance. In addition, issuance of this Report will help keep the existing massage establishments, future applicants who wish to operate in the City, and the community informed regarding the progress the City has made over the course of the last few weeks to address the concerns cited by the City Council in adopting Interim Ordinance No. 2015-001.

DATED: 11 MAY 2015

APPROVED AND ISSUED:


MICHEAL O'LEARY, Mayor
City of Culver City, California