



City of Culver City

Mike Balkman Council
Chambers
9770 Culver Blvd.
Culver City, CA 90232

Staff Report

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Item #: A-4.

CC - Introduction of an Ordinance of the City of Culver City, State Of California, (1) Repealing and Replacing Chapter 11.07 of Title 11 of the Culver City Municipal Code Pertaining to Massage Business Regulations; and (2) Amending Section 11.01.305 of Chapter 11.01 of the Culver City Municipal Code Regarding the Schedule of Businesses Requiring a Certificate of Compliance or Permit

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Fiscal Impact: Yes ☒ No ☐

General Fund: Yes ☒ No ☐

Public Hearing: ☐

Action Item: ☒

Attachments: Yes ☒ No ☐

Commission Action Required: Yes ☐ No ☒

Public Notification: Culver City News (09/01/16); E-Mail Meetings and Agendas - City Council (09/07/16); mailer to existing massage establishments in the City (08/31/16).

Department Approval: Carol Schwab, City Attorney Department (09/06/16)

RECOMMENDATION:

Staff recommends the City Council introduce an Ordinance (1) repealing and replacing Chapter 11.07 of Title 11 of the Culver City Municipal Code pertaining to massage business regulations; and (2) amending Section 11.01.305 of Chapter 11.01 of the Culver City Municipal Code regarding the Schedule of Businesses Requiring a Certificate of Compliance or Permit

BACKGROUND:

The City's interest in massage regulation relates to the unprecedented growth of businesses offering massage services in the City, and the extensive resources invested in ensuring these businesses comply with state and local laws. Between 2009 and April 13, 2015, the date the City adopted an interim ordinance establishing a moratorium on the issuance of any new permit, license, approval or entitlement pertaining to new massage establishments (the

“Moratorium”), the City has seen a significant increase in the number of massage businesses, from six to 22. The City’s existing massage ordinance, codified in Culver City Municipal Code (CCMC) Chapter 11.07 (Attachment 2) and last updated in 1987, is inconsistent with state law, thus necessitating the adoption of the Moratorium.

The growth in massage businesses coincided with the passage of Senate Bill 731 in 2008 and its successive amendments, which preempted many local government controls relating to massage therapy, particularly in the areas of zoning and licensing of massage professionals. With this growth, the City received and investigated a number of complaints related to suspected illegal activity at massage businesses and, in the recent years prior to the adoption of the Moratorium, at least five establishments were closed down by the City, due to illegal activity on the premises. The City’s limited jurisdiction in regulating massage businesses gave rise to concerns about associated negative impacts on the quality of life, the local economy and the public welfare. Effective January 1, 2015, however, Assembly Bill 1147 was passed by the State and signed by the Governor, which vested cities with renewed authority to regulate massage businesses.

The Moratorium was adopted to allow the City time to thoroughly review and study the new state law pertaining to local regulation of massage businesses, and to revise the CCMC and procedures and fees related to massage businesses. Pursuant to the provisions of the Government Code, the Moratorium was twice extended by City Council, and will expire by its own terms on April 10, 2017. Since the adoption of the Moratorium, City staff members have conducted extensive research and review of massage ordinances around the state to determine regulations that best meet the needs of the City. Staff from the Community Development (Enforcement Services), Finance and Police Departments, and the City Attorney’s Office, have worked together to present the proposed ordinance to the City Council and the public this evening.

DISCUSSION

Proposed Ordinance:

The proposed ordinance (Attachment 1) provides 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, while simultaneously being consistent with California state law. No changes are being proposed to the City’s Zoning Code, and massage businesses (referred to in the proposed ordinance as “Massage Establishments”) continue to be an allowed use in commercial zones in the City.

Definitions

The proposed ordinance contains a comprehensive list of detailed definitions that comport with state law and use current terminology in the massage industry (§11.07.010). Importantly, the definitions include a “Responsible Person,” defined as all owners of the Massage Establishment, and its officers, directors, managers, partners and all other persons with authority over the premises of the Massage Establishment. Naming Responsible Persons is key in enforcement of the regulations outlined in the proposed ordinance.

Application Process (§11.07.040)

A comprehensive application process for a Massage Establishment Permit is detailed in the proposed ordinance, which requires information about the business itself, the owner, directors, officers, partners, and any managers, as well as all Massage Technicians. The application process includes a requirement that the applicant obtain a signed affidavit from the property owner, if the proposed Massage Establishment is leasing property. This ensures that the property owner is on notice of the business operating on his/her property. Detailed permit history, work history and other personal information is required from the applicant, Responsible Persons and managers. If any information changes during the course of the permit term, the permittee is obligated to inform the City. The proposed ordinance also contains a provision that the City may require the applicant to give notice to residences within 300 feet of the proposed Massage Establishment location.

The proposed ordinance provides that if certain findings are made, the City's Permit Administrator (which is defined as the Chief Financial Officer, his/her designee, or any person designated by the City Manager) shall not issue the Massage Establishment Permit. These findings include failing to pay the application fee, being convicted of any crimes of dishonesty, fraud, deceit, or any crime of moral turpitude, and crime related to prostitution, pandering or human trafficking, or any offense regarding illegal sale, distribution or possession of a controlled substance. Additional reasons to deny the Massage Establishment Permit include if the applicant or any responsible person has had a previous massage permit or massage certificate revoked, and if the applicant makes any false misleading or fraudulent statements on the application, which is signed under penalty of perjury (§11.07.040.A). If a permit application is denied, the notice to the applicant will include information regarding the applicant's appeal rights (§11.07.040.B).

Each Massage Establishment Permit is valid for one year. If the initial permit is issued in the first three quarters of the year (on or before September 30th), the permit initial permit expires December 31 of that calendar year. Any permit issues on or after October 1st is valid until the following December 31, meaning that the permit would be valid for up to 15 months. This allows the City to process all Massage Establishment Permit renewals on a calendar year basis, making it a more efficient process (§11.07.050).

Massage Technicians

The ordinance contains a requirement that all persons performing or providing massage services in the City, defined as Massage Technicians, hold a current and valid certificate issued by the California Massage Therapy Council (CAMTC), pursuant to Business and Professions Code section 4600 *et seq.* (§11.07.020). State law does not allow the City to impose additional permit requirements if a Massage Technician has a certificate issued by the CAMTC. However, the City has the right to specify prohibitions against illegal conduct as long as the City's ordinance is consistent with state law (§11.07.070).

Exemptions

Professions that are exempt under state law from needing either a Massage Establishment Permit from the City, or a state massage certificate, are specifically listed to avoid confusion (§11.07.025). If a Massage Technician is not affiliated with a Massage Establishment, then the Massage Technician is required to also obtain a business tax certificate.

Operating Requirements (§11.07.065)

The proposed ordinance contains the operating requirements divided into three categories of regulation- general conditions, the facility itself, and operations (summarized as follows):

A. General Conditions.

1. The Massage Establishment may only operate under the name listed in the permit.
2. Only Massage Technicians with current and valid massage certificates issued by the California Massage Therapy Council (CAMTC) may perform massages at the establishment.
3. A Manager, as defined in the ordinance, must be present on the premises at all times. If different persons other than the owner serve as Manager, certain information on all Managers must be submitted to and approved by the City.
4. The Massage Establishment Permit and all Massage Certificates must be displayed at all times.
5. The hours of operation must be posted in the front window or façade of the building where the Massage Establishment is located, and clearly visible from the outside.
6. At least one certified Massage Technician must be on the premises at all times the business is open to customers.
7. A permittee, and any Manager, officer, director or partner of the permittee is responsible for the conduct of all employees and independent contractors while they are on the Massage Establishment premises. Any act or omission of any employee or independent contractor constituting a violation of the regulations is deemed the act or omission of the permittee for purposes of determining whether the permit shall be revoked, suspended, or not renewed.
8. All Massage Technicians and any other employees, shall, at all times while on the premises, wear clean clothing that is not transparent, see-through or which substantially exposes undergarments, breasts, buttocks or genitals.
9. Owners, managers, employees, independent contractors, and Massage Technicians may not conduct, engage in, or cause, allow or permit improper activities (i.e. illicit sexual activity).
10. The permittee shall maintain a personnel register containing specific information about each employee, Massage Technician, and independent contractor. If a Massage Technician uses a different name than the one listed on their identification and their

California massage certificate, the nickname or alias must be listed in the register.

B. Facilities.

1. Each establishment must post and maintain a list of treatments or services available and the cost of such treatments or services in an open and conspicuous place. No Massage Technician shall offer or perform any treatment or service other than those posted.
2. Minimum ventilation and lighting must be provided in accordance with the City's Building Code.
4. Requirements are specified for toilet facilities, dressing and bathing facilities, and the massage rooms.

C. Operations of Massage Establishments.

1. The proposed ordinance lists the requirement for clean and sanitary towels, sheets and linens, and sterilized equipment.
3. No person or persons are permitted to reside, dwell, occupy or live inside the Massage Establishment at any time.
4. Alcohol or drugs, or adult oriented merchandise are prohibited.
6. Audio or video recordings are not permitted.
7. Massage clients, patrons and customers must wear some form of clothing or draping, which ensures coverage of the specified anatomical areas.
8. Records must be maintained showing the dates and hours of each treatment or service, the name and address of the patron, the name of the Massage Technician administering such treatment or service, and a description, or the type, of treatment or service administered.
9. Hours of operation are limited to 8:00 a.m. to 10:00 p.m., which is consistent with other communities and Massage Establishments in other cities. (Currently the operating hours are 7:00 a.m. to 12 midnight).

Inspections by City staff

The proposed ordinance specifically provides for the City to make regular unscheduled inspections, during business hours, to ensure compliance with the ordinance. City staff may review records and verify the identity and certifications of all permittees, Managers and Massage Technicians on the premises (§11.07.075).

Suspension, Revocation, Non-renewal or Denial

The proposed ordinance contains detailed information on the process for the City to revoke, suspend, or deny the renewal of a permit. (§11.07.095) If a permit is suspended, revoked or not renewed, a notice will be sent to the applicant or permittee. This decision is made administratively.

The applicant or permittee has the right to appeal the decision to the City Manager, who may designate another individual to hear the appeal. The proposed ordinance details the appeal procedure and time line.

Other Miscellaneous Provisions

The ordinance also contains detailed provisions pertaining to the transfer or change of ownership and the information the permittee must provide. There is also a provision that the establishment must notify the City of any name change, and the Massage Establishment may only advertise under the name listed on the Massage Establishment Permit. (§11.07.085).

Annual renewal of a Massage Establishment Permit is not automatic. The ordinance contains provisions specific to renewal requirements, giving the City the opportunity to review the renewal application and investigate as needed prior to renewing the permit.

Existing Massage Establishments

The proposed ordinance is applicable to all existing Massage Establishments (§11.07.115), in addition to any new establishment that may apply to operate in the City. Currently operating Massage Establishments have 90 days to submit an application to comply with the new provisions after the effective date of the ordinance. In certain circumstances, the City may waive certain requirements pertaining to the physical facility, upon good cause shown. However, all establishments must still comply with all applicable City codes (building safety, zoning, fire, planning, etc).

Amendment of CCMC §11.01.035

CCMC §11.01.035 lists the types of businesses that require a permit or certificate of compliance, in addition to a business tax certificate. In the proposed ordinance, §11.01.035 is amended, to delete Massage Establishments from the list of businesses that receive a permit from the City's Committee on Permits and Licenses. Instead, Massage Establishment Permits will be issued administratively through the Finance Department. Thus, §11.01.035 would be amended to separately list Massage Establishments, with a notation "see Chapter 11.07".

Environmental Determination:

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.

FISCAL ANALYSIS:

Since the adoption of the Moratorium in 2015, no new massage permits have been issued. Once the proposed ordinance is in effect, all existing and any proposed Massage Establishments will be required to submit an application in compliance with the new ordinance.

Fees are in the process of being established to compensate the City for the resources expended to investigate and process the initial applications, renewal applications, etc. A fee resolution setting forth the proposed new fees will be brought forth to City Council prior to the effective date of the new ordinance.

ATTACHMENTS:

1. Proposed Ordinance
2. Current CCMC Chapter 11.07

MOTION:

That the City Council:

Introduce an Ordinance of the City of Culver City, State Of California, (1) Repealing and Replacing Chapter 11.07 of Title 11 of the Culver City Municipal Code Pertaining to Massage Business Regulations; and (2) Amending Section 11.01.305 of Chapter 11.01 of the Culver City Municipal Code Regarding the Schedule of Businesses Requiring a Certificate of Compliance or Permit.