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Staff Report for an Urgency Ordinance Extending a Temporary Moratorium on the Establishment or Relocation of New and Existing Massage Establishments for a Period of Ten Months and Fifteen Days, to Become Effective Immediately

**RECOMMENDATIONS**

Staff recommends that the City Council adopt the interim urgency ordinance extending a temporary moratorium on the issuance of business licenses on new massage establishments or the relocation of existing massage establishments. The moratorium, as extended, will only prohibit new massage establishments and the relocation of existing establishments to the extent permitted by State law. The moratorium will be extended for a period of ten (10) months and fifteen (15) days, to become effective immediately.

**BACKGROUND AND SUMMARY**

On October 20, 2014, the City Council adopted urgency Ordinance 2014-019 establishing a 45-day moratorium on the establishment or relocation of new and existing massage establishments. The temporary moratorium became effective immediately and will expire by its own terms on December 4, 2014 unless extended. Following notice and a public hearing, the City Council may extend the moratorium ordinance for ten (10) months and fifteen (15) days. The extension request was noticed as required.

As noted in the October 20, 2014 staff report on the adoption of the temporary moratorium ordinance, cities have traditionally had local control over local zoning and land use authority related to massage establishments. In 2009, the California Legislature adopted Senate Bill 731, which added the Massage Therapy Act to state law. The Massage Therapy Act effectively eliminated local zoning authority over massage establishments and limited San Leandro’s ability to regulate massage

establishments related to business licensing, zoning, and promotion of public health, safety, and welfare.

Prior to the effective date of the Massage Therapy Act, San Leandro had 11 establishments. After the passage of the Massage Therapy Act in 2009 the number of establishments in the City that provide massage is 30. The noticeable increase in establishments is similar to other cities in Alameda County. Cities throughout California have received numerous complaints regarding illicit activity, including prostitution, at massage establishments. In San Leandro one massage establishment, with a history of multiple offenses for prostitution since 2011, was recently shut down as part of a county-wide sting operation.

The Governor recently signed Assembly Bill 1147, which is effective January 1, 2015. Assembly Bill 1147 will amend the California Business and Professions Code to return land use authority over all massage establishments to cities.

Currently, as applications for business licenses for massage establishments are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance. Absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of massage establishments in locations within the City, without appropriate controls in place to regulate the impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City.

This moratorium will allow the City Council to (1) address community concerns regarding the establishment and operation of all massage establishments, (2) study the potential impacts massage establishments may have on residents' public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for massage establishments, (4) study and determine the appropriate zoning and location for massage establishments, and (5) determine appropriate controls for protection of public health and welfare.

With the return of local land use authority pursuant to Assembly Bill 1147, staff will continue its study of the potential impacts of massage establishments, and possible amendments to the City's Municipal and Zoning Codes for clear, consistent and uniform regulations related to the establishment, location and operation of massage establishments.

Staff recommends that the City Council extend the previously adopted moratorium on the establishment or relocation of massage establishments to provide time to study and plan an approach to massage regulation following the Governor's approval of Assembly Bill 1147.

Pursuant to Government Code section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering or studying or intends to study within a reasonable time. The City may adopt or extend a moratorium on an urgency basis provided that the City finds that there exists a threat to the public health, safety and welfare.

Staff and the City Attorney have prepared the attached urgency ordinance for the City Council's consideration. As described in more detail below, this urgency ordinance would extend a temporary moratorium on the issuance of business licenses for massage establishments and the relocation of existing massage establishments. The moratorium would not prohibit:

1. The renewal of a business license for an existing massage establishment that seeks to maintain the massage establishment in its current location, in a manner, and housed within a building, which complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws; and
2. Persons engaged as: (a) physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice within the scope of their licenses; (b) employed at hospitals, nursing homes, sanitariums, or any other health facility licensed by the state; (c) coaches or trainers acting within the scope of their employment at accredited high schools, junior colleges, colleges or universities, and (d) trainers of amateur, semi-professional or professional athletes or athletic teams while engaged in their training responsibilities for and with athletes, and working in conjunction with a specific athletic event.
3. The issuance of a business license to or relocation of, a California Massage Therapy Council certified massage establishment until AB 1147 takes effect on January 1, 2015.

Government Code Section 65858(d) states: "Ten days prior to the expiration of an interim ordinance or any extension, [the City Council] shall issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the ordinance." Pursuant to this provision the City Council hereby reports that, due to the pending changes in state law that amend the Business and Professions Code to return land use authority over massage establishments to cities relative to the location and operation of massage establishments, the extension of the interim ordinance for an additional ten months and fifteen days pursuant to Government Code Section 65858 is necessary to ensure that contemplated amendments to the City's Municipal Code are legally adequate and can be found to be necessary to protect the health, safety and welfare of the community. In anticipation of the grant of land use and operational regulatory authority to cities, staff has commenced the preparation of amendments to the Municipal Code and Zoning Code consistent with the forthcoming changes in state law. As noted above, changes in state law do not take effect until January 1, 2015, and the City will not regain land use and operational regulatory authority until that time.

If a massage establishment was approved in the City, prior to the City having an opportunity to study and adopt massage establishment regulations, it could create conflicts among land uses, or conflict with the City's long-term planning goals. Also, multiple jurisdictions have seen a proliferation of massage establishments and criminal activity at these locations. Accordingly, establishment or relocation of massage establishments in the City at this time, before the City can adopt regulations or determine how best to address potential secondary effects of these types of uses presents a current and immediate threat to the public health, safety, and welfare. Therefore, staff and the City Attorney recommend adoption of the urgency ordinance in order to avoid this current and immediate threat to the public health, safety, and welfare, which could occur if parties seeking to evade the adoption of regulations were permitted to obtain approval for uses that might defeat the ultimate objective of the adoption of regulations.

In order to ensure that the City's zoning provisions are adequate and that massage establishments will be located and regulated in a manner that protects the public and satisfies the policies, goals and objectives of the General Plan, staff and the City Attorney recommend that the City Council direct staff to study and provide recommendations to the City Council on what Municipal or Zoning Code amendments and regulations are necessary in order to protect against any potential primary and secondary impacts of massage establishments on the community.

This Ordinance would approve a ten (10) month and fifteen (15) day extension of the temporary moratorium on the establishment or relocation of new and existing massage establishments in the City upon a 4/5 vote of the Council. The moratorium may be further extended for an additional year. However, it is anticipated that staff will prepare necessary changes to the Municipal Code and Zoning Code before the end of the ten (10) month and fifteen (15) day extension of this ordinance. In conjunction with the adoption of necessary changes to the Municipal Code and Zoning Code, staff will recommend that the City Council terminate this moratorium early. This moratorium is needed in order to conduct a study on how best to address the potential threats to public safety, health and welfare resulting from massage establishments in light of pending changes in state law that will reestablish local control over massage establishments. The act of extending the moratorium is not a review or determination on the merits of allowing such uses or not; instead, it will allow the City time to study the issue.

**PREPARED BY:** Richard D. Pio Roda, City Attorney, City Attorney's Office

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