

ITEM 9.A.

MOORPARK CITY COUNCIL AGENDA REPORT

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director
Prepared by: Joseph Fiss, Principal Planner 

DATE: April 7, 2010 (CC Meeting of 4/21/2010)

SUBJECT: Consider Interim Urgency Ordinance Making Findings and Establishing a Temporary Moratorium on Permitting New Massage Establishments; and Consider Resolution Directing the Planning Commission to Study, Hold a Public Hearing, and Provide a Recommendation on an Ordinance Amending Chapter 5.48 Massage Establishments and Therapists, of Title 5 Business Taxes, Licenses and Regulations, and Section 17.20.060, Permitted Uses in Commercial and Industrial Zones, of Title 17 Zoning, of the Moorpark Municipal Code

BACKGROUND / DISCUSSION

On December 5, 2007, the City Council adopted Ordinance 366, amending Title 5 of the Moorpark Municipal Code. Among other changes, this ordinance included comprehensive changes to Chapter 5.48, regulations for massage establishments and massage therapists. On September 27th, 2008, SB 731, a consumer protection bill, was signed into California law. Effective September 1, 2009, SB 731 provides for voluntary statewide certification of massage therapists and restricts local regulation of massage establishments and massage therapists or practitioners that are certified by the California Massage Therapy Council (CAMTC). Local jurisdictions can continue to regulate uncertified massage establishments and massage therapists or practitioners. A fact sheet issued by the CAMTC regarding local authority of massage establishments and therapists or practitioners is attached.

Under the provisions of SB 731, the City is limited in its ability to regulate massage establishments with therapists certified by the CAMTC. In addition to reasonable health and safety requirements, the City can adopt land use and zoning requirements for massage establishments provided that the requirements are no different than those uniformly applied to other professional or personal services businesses, and can require up to date proof that all staff providing massages are currently certified by the CAMTC. In order to obtain certification, massage therapists and practitioners must complete a

minimum number of hours of education in massage theory, techniques, anatomy, physiology, ethics and other core curriculum. Applicants for state certification also undergo criminal background checks including fingerprints. The CAMTC is authorized to investigate the certificate of completion of questionable schools and reject those it determines to be fraudulent, and can also discipline certificate holders through probation, suspension, revocation, or other means it deems proper.

Staff recommends the adoption of an interim urgency ordinance (Attachment 2) to place a 45-day moratorium on the issuance of any entitlement or permits for new massage establishments. Enacting this moratorium would allow City staff time to determine appropriate zoning regulations to protect the public health, safety, and welfare consistent with State law. The City Attorney has reviewed the draft interim urgency ordinance. A 4/5 vote is required for adoption.

If adopted, this interim urgency ordinance would expire on Saturday, June 5, 2010. If staff is unable to complete the necessary work prior to June 5, 2010, a schedule and recommendation for extension of the moratorium would be provided. A public hearing is required for adoption of an extension ordinance. Staff anticipates that additional time will be necessary to thoroughly research and evaluate any proposed code changes and recommends that the City Council direct staff to schedule and notice a public hearing for May 19, 2010 to extend the Interim Ordinance. A draft resolution to initiate a Zoning Ordinance Amendment is also attached for Council consideration (Attachment 3).

STAFF RECOMMENDATION (ROLL CALL VOTE 4/5TH AFFIRMATION)

1. Adopt Ordinance No. _____;
2. Adopt Resolution No. 2010-_____; and
3. Direct staff to schedule and notice a public hearing for May 19, 2010 to extend the Interim Ordinance.

ATTACHMENTS:

1. CAMTC Fact Sheet
2. Draft Ordinance
3. Draft Resolution

SB 731 FACT SHEET

SB 731 MEETS STANDARDS CURRENTLY ESTABLISHED BY CITIES AND COUNTIES AND WILL ALSO BENEFIT CITIES AND COUNTIES:

I. SB 731 Meets Standards Established by Cities and Counties:

- Applicants for state certification will undergo criminal background checks including fingerprints. (Section 4601.3(a)). The CAMTC is mandated to request subsequent arrest notification service from the Department of Justice for all applicants for licensure for whom fingerprints are submitted. (Section 4601.3(d)).
- The CAMTC will be authorized to investigate the certificate of completion of questionable schools and reject those it determines to be fraudulent. (Section 4601(g)(1) and (2)).
- The CAMTC will be authorized to discipline certificate holders through probation, suspension, revocation, or other means it deems proper. (Section 4601(a)).
- The CAMTC will be required to permanently revoke the certificate of anyone violating subdivision (b) of Section 647 of the Penal Code of any offense described in subdivision (h) of Section 4603. The law requires the CAMTC to immediately suspend the certificate, notify the certificate holder and any business employing the certificate holder of such suspension. Upon notice that the charges have resulted in a conviction, the CAMTC has authority to revoke the certificate. (Section 4602(c)).
- The CAMTC will be authorized to deny or revoke certificates for unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions. (Section 4603(a)).
- The CAMTC may also deny or revoke a certificate for the following: procuring a certificate by fraud, misrepresentation, or mistake; violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any rule or bylaw adopted by the organization; conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime; impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a certificate; impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate; committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder; committing any act punishable as a sexually related crime. (Section 4603(a)-(h)).

- It is an unfair business practice to state that one is certified, registered or licensed by a governmental agency (the CAMTC will be a private not-for-profit with legislative oversight) as a massage therapist or practitioner. (Section 4605).
- It is an unfair business practice for any person to hold oneself out or use the title of "certified massage therapist" or "certified massage practitioner" or any other term, such as "licensed," "registered," or "CMT," that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of the law. (Section 4606).

II. SB 731 Allows Cities and Counties to Know Who is Practicing in Their Jurisdiction:

- SB 731 gives the CAMTC broad authority to share information with local authorities. The CAMTC is authorized to provide to local authorities information concerning a certificate holder, including but not limited to, the current status of the certificate holder, address of the certificate holder (home and work), history of disciplinary actions against the certificate holder (including revocation), and any other information necessary to verify facts relevant to administering a local ordinance (Section 4602.5(a)).
- The CAMTC must also accept information provided by local authorities, and has a responsibility to review information received and take action warranted by that information. (Section 4602.5(b)).
- The CAMTC is required to request subsequent arrest notification service from the Department of Justice for all applicants for licensure. (Section 4601.3(d)). The CAMTC can share this information with local authorities, as stated above.

III. Important Authority Retained by Cities and Counties under SB 731

- Cities and counties retain authority over any person not certified pursuant to SB 731. (Section 4613(a)).
- SB 731 specifies that the superior court in and for the county in which any person acts as a massage practitioner or massage therapist in violation of the provisions of this chapter, may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. The proceedings under this paragraph shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. (Section 4607).
- A city or county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to:
 - ✓ Cleanliness of rooms
 - ✓ Cleanliness of towels and linens
 - ✓ Reasonable attire and personal hygiene requirements
 (Section 4612(b)(6)).
- A city or county may require an applicant for a business license to operate a massage establishment to fill out an application providing relevant information and make reasonable investigation into the information provided. (Section 4612(b)(7)).
- Local authorities can deny or restrict a business license if the applicant has provided materially false information (Section 4612(b)(7)).

- The owner/operator of a massage establishment is responsible for the conduct of all employees or independent contractors working on the premises. Local authorities can still suspend, revoke or otherwise restrict the license issued to a massage establishment for violations of SB 731 or local ordinances. (Section 4612(c)).
- Local authorities may have and enforce an ordinance that is applicable to massage businesses or establishments that provides duly authorized officials of the city or county the right to conduct reasonable inspections during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements. Such ordinances may require an owner or operator to notify the city or county of any intention to rename, change management, or convey the business to another person. (Section 4612(d)).
- Local authorities may require a massage establishment to maintain on its premises for review evidence demonstrating that all persons providing massage services are certified. A local authority may require a business to file copies or provide other evidence of the certificates held by persons providing massage services at the business. Section 4612(b)(2)(A)-(B).
- Cities and counties may adopt land use and zoning requirements applicable to massage establishments provided that the requirements are no different than those uniformly applied to other professional or personal services businesses. (Section 4612(b)(4)).

IV. Restrictions on Local Authorities

- Local authorities cannot have land use and zoning requirements applicable to massage establishments that are not also applied to other professional or personal service businesses. (Section 4612(b)(4)).
- Local building code or physical facility requirements applicable to massage establishments cannot:
 - ✓ Require additional restrooms, showers or other facilities that are not uniformly applicable to other professional or service businesses
 - ✓ Require unlocked doors when there is no staff available to assure security for clients and staff behind closed doors
 - ✓ Require windows that provide a view into massage rooms
 (Section 4612(b)(5)).
- Local authorities cannot adopt ordinances that impose additional qualifications, such as medical examinations, background checks or other criteria, upon anyone certified by the CAMTC.

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM ON PERMITTING NEW MASSAGE ESTABLISHMENTS WITHIN THE CITY OF MOORPARK

WHEREAS, the City Council of the City of Moorpark does ordain as follows:

SECTION 1. Findings

A. The City desires to provide for the public safety, health and welfare of the residents and visitors to the City of Moorpark ("City").

B. One means of doing so is by regulating businesses that provide services that may create additional public safety, health and welfare impacts within the City. These businesses include massage establishments, which are currently regulated by Municipal Code Chapter 5.48 (Massage Establishments and Therapists) and Title 17 (Zoning).

C. Recent changes in State law (SB 731, approved September 27, 2008) have affected the ability for the City to regulate massage establishments under its current Municipal Code regulations, creating an inconsistency with State law.

D. The City finds that without examining its current regulations in light of these changes to the State law, public welfare will be harmed by the inconsistency between local regulations of massage establishments and State law. The public welfare will additionally be harmed if massage establishments are initially allowed in certain zones, but then later prohibited or further regulated in those zones, creating non-conforming uses and an unnecessarily more complex regulatory environment.

E. If the City continues to approve new massage establishments, each new entitlement would be granting a right to use the property in a manner which does not necessarily reflect the needs and wants of the public. Furthermore, it will not adequately protect the public's health, safety and welfare. As such, if the City fails to enact this moratorium immediately, all new entitlements for massage establishments will create a current and immediate threat to the public health, safety and welfare.

F. The City Council intends to study how the application process and entitlement granting process for new massage establishments should be revised to be both consistent with State law, and protect the public health, safety, and welfare.

G. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 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 Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 2. Imposition of Moratorium

A. In accordance with the authority granted to the City of Moorpark by Government Code Section 65858, and pursuant to the findings stated herein, from and after the date of the enactment of this ordinance, no use permit, variance, building permit, zoning clearance, business registration or other applicable entitlement shall be approved under Municipal Code Chapter 5.48 and Title 17 for a new "massage establishment" as defined in Municipal Code section 5.48.20.

B. This ordinance is an interim urgency ordinance adopted pursuant to the authority granted to the City of Moorpark by Government Code Section 65858, and is for the immediate preservation of the public health, safety, and welfare.

SECTION 3. Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. Effective Date

Consistent with Government Code 65858, this ordinance shall become effective immediately upon adoption if adopted by at least a four-fifths vote of the City Council and shall be in effect for forty-five (45) days from the date of adoption unless extended by the City Council as provided for in the Government Code.

SECTION 5. Publication

The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book or original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star, a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this 21st day of April, 2010.

Janice S. Parvin, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

RESOLUTION NO. 2010-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, DIRECTING THE PLANNING COMMISSION TO STUDY, HOLD A PUBLIC HEARING AND PROVIDE A RECOMMENDATION TO THE CITY COUNCIL ON AN ORDINANCE AMENDING CHAPTER 5.48 MASSAGE ESTABLISHMENTS AND THERAPISTS, OF TITLE 5 BUSINESS TAXES, LICENSES AND REGULATIONS, AND CHAPTER 17.08 DEFINITIONS, CHAPTER 17.16 PURPOSES OF ZONES, AND CHAPTER 17.20 USES BY ZONE, OF TITLE 17 ZONING, OF THE MOORPARK MUNICIPAL CODE

WHEREAS, Section 17.44.050 of the Municipal Code provides that the City Council may initiate proceedings to consider amendments to the Zoning Ordinance by the adoption of a resolution of intent; and

WHEREAS, the City Council wishes to initiate proceedings to consider an ordinance amending Chapter 5.48 Massage Establishments and Therapists, of Title 5 Business Taxes, Licenses and Regulations, and Chapter 17.08 Definitions, Chapter 17.16 Purposes of Zones, and Chapter 17.20 Uses by Zone, of Title 17 Zoning, of the Moorpark Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. INITIATION OF PROCEEDINGS: The City Council hereby authorizes the initiation of proceedings to consider an ordinance amending Chapter 5.48 Massage Establishments and Therapists, of Title 5 Business Taxes, Licenses and Regulations, and Chapter 17.08 Definitions, Chapter 17.16 Purposes of Zones, and Chapter 17.20 Uses by Zone, of Title 17 Zoning, of the Moorpark Municipal Code.

SECTION 2. DIRECTION TO PLANNING COMMISSION: The Planning Commission is hereby directed to study, hold a public hearing, and provide a recommendation to the City Council on this matter.

SECTION 3. CITY CLERK CERTIFICATION AND FILING: The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 21st day of April, 2010.

Janice S. Parvin, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk