

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

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

DATE: April 30, 2010 (CC Meeting of 5/19/2010)

SUBJECT: Consider Adoption of an Interim Ordinance of the City of Moorpark, California, Extending a 45-Day Moratorium on New Massage Establishments Within the City of Moorpark as Initiated by Ordinance No. 385, by 10 Months and 15 Days, to April 20, 2011 and Issuing a Report on the Measures Taken to Alleviate the Conditions which Led the City to Enact Ordinance No. 385 on April 21, 2010 (10-Day Report)

BACKGROUND/DISCUSSION

Existing Moratorium on New Massage Establishments

On April 21, 2010, the Moorpark City Council enacted an urgency Interim Ordinance to place a 45-day moratorium on the issuance of any entitlement or permits for new massage establishments, and directed staff to schedule and notice a public hearing to consider extending the Interim Ordinance. Notice of the Public Hearing to consider an extension of the moratorium was published on May 8, 2010.

Proposed Interim Ordinance

A draft interim ordinance has been prepared to extend the moratorium on new massage establishments. If adopted, the Ordinance (Attachment 1) would extend the temporary moratorium on the issuance of any entitlement or permits for new massage establishments in the City of Moorpark for an additional 10 months and 15 days, through and including April 20, 2011, allowing staff to conduct the necessary research and prepare draft amendments to the Moorpark Municipal Code related to massage establishments and therapists. If draft amendments are completed for Council's consideration prior to April 20, 2011, staff would recommend that the Interim Ordinance be rescinded at the time such new regulations become effective.

10-Day Report

Government Code Section 65858(d) requires the legislative body to issue a report describing the measures taken to alleviate the condition which led to an Interim Ordinance 10 days before its expiration. A draft of this 10-Day Report, which must be issued no later than May 26, 2010, is attached as Attachment 2. If approved, staff will post this report on the City's website and make copies available at the front counter of City Hall.

STAFF RECOMMENDATION

1. Open the public hearing, take public testimony and close the public hearing.
2. Adopt Interim Ordinance No. _____. **(4/5 Roll Call Vote Required)**
3. Issue report on the measures taken to alleviate the conditions which led the City to enact Ordinance No. 385 on April 21, 2010 (10-Day Report) and direct staff to post on the City's website and make copies available at the City Hall public counter.

ATTACHMENTS:

1. Draft Ordinance
2. Draft 10-Day Report

ORDINANCE NO. ____

AN INTERIM ORDINANCE OF THE CITY OF MOORPARK,
CALIFORNIA, MAKING FINDINGS AND EXTENDING 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. Extension of Moratorium

A. This ordinance is an extension of the existing forty-five (45) day urgency interim ordinance (Ordinance No. 385), and is adopted pursuant to the authority granted to the City of Moorpark by Government Code Section 65858, for the immediate preservation of the public health, safety, and welfare.

B. In accordance with the authority granted to the City of Moorpark by Government Code Section 65858, and pursuant to the findings stated herein, 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 for a period of ten (10) months and fifteen (15) days beyond the term of the moratorium established by Ordinance No. 385, through and including April 20, 2011.

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 extend the provisions enacted by Ordinance 385 for an additional ten (10) months and fifteen (15) days from the date of adoption, through and including April 20, 2011.

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 19th day of May, 2010.

Janice S. Parvin, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

**REPORT ON THE MEASURES TAKEN TO ALLEVIATE THE
CONDITIONS WHICH LED THE CITY OF MOORPARK TO
ENACT URGENCY INTERIM ORDINANCE NO. 385
ON APRIL 21, 2010**

**ISSUED BY THE CITY COUNCIL OF THE CITY OF MOORPARK
MAY 19, 2010 PURSUANT TO GOVERNMENT CODE SECTION
65858(d)**

Background

On April 21, 2010, pursuant to Government Code § 65858, the Moorpark City Council enacted an urgency Interim Ordinance (the "45 Day Ordinance") to impose a moratorium on permitting new massage establishments. Absent any additional action, the Interim Ordinance would have expired after 45 days. However, Interim Ordinance No. ____, adopted on May 19, 2010, extended the moratorium for an additional 10 months and 15 days, through and including April 20, 2011.

Reasons for the 45 Day Ordinance and Its Extension

The urgency Interim Ordinance was adopted for the following reasons:

1. The 45 Day Ordinance was adopted to allow the City an opportunity to better understand the impacts of SB 731 and to consider reasonable health and safety requirements, including 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.
2. 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.
3. 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.
4. 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.

The moratorium was extended on May 19, 2010, by Ordinance No. ___ for the same reasons that the 45 Day Ordinance was originally adopted, as those reasons are still accurate.

Measures Taken to Alleviate the Conditions Which Led to the Adoption of the Ordinance

Thus far, staff has begun to review applicable law in this area. Additionally, staff is in communications with the California Massage Therapy Council (CAMTC) and is researching how other cities are dealing with SB 731. 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. Should draft amendments to the Moorpark Municipal code be available for consideration by the City Council prior to April 20, 2011, staff would recommend rescinding the Interim Ordinance upon the effective date of the new regulations.
