



Staff Report

File #: TMP-0215, **Version:** 1

MEETING DATE:

NOVEMBER 10, 2014

SUBJECT:

ORDINANCE NO. 2014-1405 - CONSIDERATION OF AN INTERIM URGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF MASSAGE ESTABLISHMENTS

Recommendation

INTRODUCE AND ADOPT the attached proposed interim urgency Ordinance, which imposes a temporary moratorium on the establishment of any new massage establishments and expansion of any existing massage establishments within the City of San Marcos.

Board or Commission Action

Not applicable

Relevant Council Strategic Theme (If not applicable, please state not applicable below)

Quality of Life

Relevant Department Goal

Not applicable

Introduction

The massage business in the City of San Marcos is currently regulated under San Marcos Municipal Code (SMMC) Chapter 5.44. The Governor recently signed Assembly Bill 1147 relating to massage therapy, which was supported by this Council and becomes effective January 1, 2015. AB 1147 restores a measure of local control over massage establishments by giving agencies more authority to establish and enforce regulations that govern massage establishments and the manner in which those businesses and professionals operate. It is recommended that the City Council enact a temporary moratorium on massage establishments to provide the time needed to study and to appropriately amend the City's regulations in response to AB 1147, as well as previous state legislation relating to massage therapy.

A moratorium takes effect immediately to temporarily prohibit the issuance of permits or entitlements for a particular type of use to allow an agency to study the potential effects and amend or establish regulations for that use. The proposed interim urgency Ordinance imposes a temporary moratorium on the approval of new massage establishments and the expansion of existing massage establishments to preserve the public health, safety and welfare until such time as the City has completed its study and review of potential amendments to the SMMC and the Zoning Ordinance consistent with the provisions of AB 1147.

The proposed Ordinance imposes a forty-five (45) day moratorium (Initial Moratorium Period) on the approval or issuance of any land use entitlements, business licenses, massage establishment license, massage technician permit, massage technician trainee permit, building permits, conditional use permits, or other land use approvals for the establishment or expansion of a massage establishment within the City of San Marcos. Prior to the expiration of the Initial Moratorium Period, another ordinance will be brought forward to extend the moratorium for an additional period.

Discussion

On September 18, 2014, the Governor signed AB 1147. This legislation essentially restores local government control which had previously been curtailed by the California Legislature. Senate Bill 731, which was passed in 2008, established the California Massage Therapy Counsel (CAMTC), and AB 619 further limited local control in favor of regulation by CAMTC in 2011. AB 1147 restores the right of cities and counties to regulate the massage business through adopting or enforcing local ordinances that govern zoning, business licensing, or reasonable health and safety requirements of massage establishments. AB 1147 becomes effective on January 1, 2015.

It is recommended that the City Council adopt an interim ordinance because the City has a compelling interest in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and integrity of its neighborhoods, and in providing clear local regulation consistent with State law. California Government Code Section 65858 authorizes the City to adopt the proposed interim Ordinance on an urgency basis, the passage of which will prohibit and preclude the approval or issuance of any applicable license or entitlement for use, including but not limited to, the issuance of a business license, massage establishment license, massage technician permit, massage technician trainee permit, building permit, conditional use permit, or other land use approval for the establishment or expansion of any massage establishment within the City.

The proposed Ordinance will allow the City to adequately review and evaluate potential regulatory schemes before bringing it forward for the appropriate approvals, and will not preclude the continued operation of any lawfully existing massage establishment that does not seek expansion, or the opening of any massage establishment for which all approvals have been made prior to the adoption of the Ordinance.

The proposed Ordinance will also allow existing massage establishments that employ CAMTC-certified massage professionals to replace or exchange existing massage professionals with CAMTC-certified massage professionals. The number of replacement employees must equal, and may not exceed, the number of massage professionals currently employed by the massage establishment on the date the proposed Ordinance goes into effect. Massage establishments that do not employ CAMTC-certified massage professionals will not be permitted to replace or exchange existing employees. Under the moratorium, no massage establishment, whether or not it employs CAMTC-certified employees, may employ additional massage professionals, CAMTC-certified or otherwise, beyond the number of massage professionals employed by the establishment on the date the proposed Ordinance becomes effective.

Interim urgency ordinances are effective for a period of 45 days from the date of adoption, and may be extended for a period of ten (10) months and fifteen (15) days. Staff will bring this matter back to the Council by or before the December 9, 2014 City Council meeting for purposes of securing any necessary

extension of the interim urgency Ordinance and its protections.

Fiscal Impact

No fiscal impact is anticipated as a result of the proposed Ordinance.

Attachment(s)

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS,
CALIFORNIA, IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF
MASSAGE ESTABLISHMENTS

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