



City of San Leandro

Meeting Date: October 20, 2014

Staff Report

File Number: 14-442

Agenda Section: ACTION ITEMS

Agenda Number: 10.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for an Urgency Ordinance Making Findings and Establishing a Temporary Moratorium on the Establishment or Relocation of New and Existing Massage Establishments to Become Effective Immediately

RECOMMENDATIONS

Staff recommends that the City Council adopt, by a 4/5 vote, an interim urgency ordinance to place a temporary moratorium on the issuance of business licenses on new massage establishments or the relocation of existing massage establishments within the City. The moratorium will only prohibit new massage establishments and the relocation of existing establishments to the extent permitted by State law. Upon its adoption, the moratorium will be effective immediately for forty-five days. The moratorium may be extended through subsequent public hearings and City Council actions for up to 22 months and 15 days. This moratorium is necessary in order to conduct a study on how best to address the primary and secondary effects to public safety, health and welfare associated with massage establishments, and pending changes to state law that will re-establish local land use controls over massage establishments. The act of adopting the moratorium is not a review or determination on the merits of allowing disallowing the proposed land use.

BACKGROUND AND SUMMARY

Cities have traditionally had local control over local zoning and land use authority related to massage establishments. In 2009, the 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 as it relates 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 massage establishments. After the passage of the Massage Therapy Act in 2009 the number of massage establishments in the City increased to 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. One massage establishment in San Leandro with a history of multiple offenses for prostitution since 2011 was recently shut down as part of a county-wide law enforcement sting operation.

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

In order to comply with current State law, 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 within the City, without updated controls and regulations in place to address the primary and secondary impacts on the community, will result in harmful effects to neighboring businesses, property owners and residents.

A moratorium on the establishment of new or the relocation of existing massage establishments to provide time to study and plan an approach to massage regulation following the Governor's approval of Assembly Bill 1147 is necessary. The proposed moratorium will allow the City Council to (1) address community concerns regarding the establishment and operation of massage establishments, (2) study the impacts massage establishments have on public health and safety, (3) study and determine what regulations are legally allowed upon massage establishments that are owned by or employ massage therapists certified by the California Massage Therapy Council, (4) study and determine the appropriate zoning and location for massage establishments, and (5) determine appropriate controls for primary and secondary impacts associated with massage establishments for protection of public health and welfare.

With the return of local land use authority pursuant to Assembly Bill 1147, staff will study and may recommend amendments to the City's Municipal Code and Zoning Code for clear, legally consistent and uniform regulations related to the establishment, location and operation of massage establishments.

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 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 establish 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 that 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.

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 and General Plan. Also, multiple jurisdictions, including San Leandro, have noticed 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.

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

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City of San Leandro

Meeting Date: October 20, 2014

Urgency Ordinance

File Number: 14-443

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: URGENCY ORDINANCE Making Findings and Establishing a Temporary Moratorium on the Establishment or Relocation of New and Existing Massage Establishments to Become Effective Immediately (establishes a 45-day moratorium on the issuance of business licenses for massage establishments)

WHEREAS, the City of San Leandro has an interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental, and economic values; and

WHEREAS, cities have traditionally had a high degree of local control related to local zoning and land use authority over massage establishments; and

WHEREAS, the California Legislature adopted Senate Bill 731, effective July 1, 2009, adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy ("Massage Therapy Act"); and

WHEREAS, the Massage Therapy Act placed substantial limits on cities' regulation of massage establishments as it relates to business licensing, zoning, and health, safety, and welfare regulation; and

WHEREAS, in 2009, San Leandro had 11 establishments that provided massage and now has 30 establishments that provide massage; and

WHEREAS, 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 enforcement sting operation; and

WHEREAS, San Leandro, consistent with the Massage Therapy Act, has no existing zoning regulations that address the location of California Massage Therapy Council (“CAMTC”) certified massage establishments near potentially sensitive areas throughout the City; and

WHEREAS, the California Legislature recently passed Assembly Bill 1147, which is effective January 1, 2015, amending Section 460 of, and adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, and amending Section 51034 of the Government Code; and

WHEREAS, Assembly Bill 1147 will return land use authority over massage establishments to cities; and

WHEREAS, as applications from CAMTC certified massage establishments for business licenses 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 and unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and

WHEREAS, there is a threat to the public health, safety and welfare of the community if massage establishments locate in the City without proper regulations in place. 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; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California Government Code Section 65858, subdivision (a) provides that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum of two times and have a maximum total duration of 2 years; and

WHEREAS, California Government Code Section 65858, subdivision (c) provides that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, and welfare, and that the approval of additional entitlements would result in that threat to the public health, safety and welfare; and

WHEREAS, the City Council desires to (1) address the community concerns regarding the establishment and operation of all massage establishments, (2) study the potential impacts massage establishments may have on the 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.

WHEREAS, in accordance with California Government Code Section 65858, subdivision (c), which provides that such interim ordinances that have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing (as defined in California Government Code Section 65858, subdivisions (g) and (h)) may not be extended except upon written findings adopted by the legislative body as specified in the subdivision, the City Council hereby finds that the moratorium established pursuant to this ordinance will not have the effect of denying approvals needed for the development of projects with a significant component of multi-family housing; and that, therefore, the findings specified in Section 65858, subdivision (c), need not be made; and

WHEREAS, consistent with the return of local land use authority pursuant to Assembly Bill 1147, staff shall commence steps to conduct a study of the potential impacts of massage establishments, and possible amendments to the City's Municipal Code and Zoning Code for clear, consistent and uniform regulations related to the establishment, location and operation of such businesses; and

WHEREAS, the City will take steps to update its Municipal Code and Zoning Code to ensure the City's laws are consistent with the goals, policies and standards of the General Plan and the goals of the City Council to protect the public health, safety, and welfare; and

WHEREAS, the City will consider other existing and potential land uses within the City to assure a degree of compatibility between the location of massage practice and surrounding properties, and study revisions to the Zoning Code; and

WHEREAS, the City seeks a moratorium on establishment or relocation of massage establishments to provide the City time to study and plan its approach to massage regulation following the Governor's approval of Assembly Bill 1147; and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a

significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

NOW, THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

Section 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct and findings of the City Council of the City of San Leandro.

Section 2. Moratorium Imposed.

A. Scope. In accordance with the authority granted the City of San Leandro under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance, no person, partnership, corporation, or other entity shall commence doing business as, or operations of, a massage establishment, nor shall a business license be issued to a massage establishment owner unless specifically excluded herein.

B. Exceptions. This moratorium shall not prohibit the following: 1) the renewal of a business license for an existing massage establishment provided that the renewal seeks to maintain the massage establishment in its current location, and the massage establishment is operating in a manner, and housed within a building, which complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws; 2) persons engaged as follows: (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 when training or working in conjunction with a specific athletic event; and 3) the issuance of a business license to, or relocation of, a CAMTC certified massage establishment until AB 1147 takes effect on January 1, 2015.

C. Statutory Findings and Purpose. This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council as set forth in the recitals incorporated by Section 1 of this ordinance, and the additional information set forth below:

1. The purpose of this ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by the establishment or relocation of new and existing massage establishments within the City of San Leandro, in light of the State Legislature's recent passage of Assembly Bill 1147, which reinstates significant local control over massage establishments to local jurisdictions, until such reasonable time as a detailed study of the possible adverse impacts such establishments might have on commercial and residential uses and the general public health, safety, and welfare. The facts constituting the urgency are: a) the City currently has 30 establishments that provide massage and only had 11 establishments prior to the passage of Senate Bill 731 in 2009, which deprived cities of local control over massage establishments; b) cities throughout California, including San Leandro,

have received complaints, investigated, and from time to time have found illicit activity, including but not limited to prostitution, occurring at massage establishments; c) there are no existing regulations within the City of San Leandro that address the location of California Massage Therapy Council (“CAMTC”) certified massage establishments, and massage operations, which are near potentially sensitive areas throughout the City; d) such locations can be particularly sensitive to potential harmful effects of massage establishments; e) as applications for business licenses 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; f) unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and g) the State Legislature recently passed Assembly Bill 1147, which will become law on January 1, 2015, and permits cities to re-establish local land use control over massage establishments.

2. Absent the adoption of this urgency ordinance, the establishment and operation of massage establishments in the City would result in the harmful secondary effects identified above.

3. It is necessary to study the possible adoption of amendments to the City’s Municipal Code and Zoning Code in order to adopt legislation pursuant to the return of local land use control over massage establishments authorized by Assembly Bill 1147.

4. Issuing business licenses, prior to the completion of the City’s study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare.

5. In light of the harmful secondary effects associated with massage establishments and the current and immediate threat such secondary effects pose to the public health, safety and welfare, it is necessary, in accordance with Government Code section 65858, to impose a moratorium on the issuance of entitlements for and the establishment or relocation of massage establishments in the City to provide time for the City Council to further evaluate and consider possible adoption of legislation, guidelines and/or polices as required to avert the potential impacts of massage establishments.

Section 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of San Leandro hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. Effective Date and Duration. This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 45 days therefrom unless extended by the City in accordance with California Government Code Section 65858.

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