



STAFF REPORT

Date: February 25, 2015
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan Montgomery, City Manager; Derek Cole, City Attorney; Dan Gomez, Chief of Police; Joshua McMurray, Planning Manager
Subject: Extension of moratorium regarding new massage businesses

FOR CONSIDERATION AT THE CITY COUNCIL MEETING ON MARCH 24, 2015

Background and Analysis

On February 24, 2015 the City Council adopted an urgency ordinance imposing a temporary moratorium on the establishment of any new massage businesses in the City of Oakley. Pursuant to state law, that initial ordinance was valid for a period of 45 days. The City may, after a noticed public hearing, extend that ordinance for an additional ten months. That is the purpose of this evening's agenda item.

Many massage establishments are legitimate businesses that offer clients benefits to their health. Unfortunately, many massage operations in the Bay Area condone or encourage illicit activities, creating blight in the neighborhoods where they are located.

As we reported last month, a new state law, AB 1147, allows cities to once again have zoning regulation power over massage businesses. We think it prudent to undertake a study to determine what, if any, new regulations we may want to consider from a zoning perspective. Typical regulations would include limited zoning districts in which the businesses can be located, requirement for a conditional use permit, restriction of hours of operation, minimum distance from other sensitive uses, possible sign and parking regulations, etc.

Any massage businesses currently operating within Oakley are unaffected by this procedure.

Staff would like to receive the information to be provided on this subject at the upcoming statewide city attorney conference in May, as well as determine what actions our neighboring cities plan to take. If we were to have less restrictive regulations than our nearby cities, that could encourage more massage businesses to consider locating in Oakley.



Fiscal Impact

None anticipated.

Recommendation and Alternatives

1. Conduct the public hearing and receive any public comments;
2. Deliberate among Councilmembers;
3. Adopt the urgency ordinance extending the initial urgency ordinance (4/5ths vote required).

As an alternative, Council could direct staff to conduct the study without extending the moratorium. The disadvantage to this alternative is that new massage businesses could start operations in a way that could be inconsistent with the proposed new rules.

Attachment

Urgency ordinance extending the effectiveness of the massage business moratorium.

ORDINANCE NO. _____
AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY
EXTENDING THE EFFECTIVENESS OF ORDINANCE NO. 04-15,
PROHIBITING THE ISSUANCE OF PERMITS, LICENSES OR APPROVALS FOR
CONSTRUCTION, ESTABLISHMENT OR OPERATION OF MASSAGE PARLORS
ON AN INTERIM BASIS

The City Council of the City of Oakley does ordain as follows:

SECTION 1. Interim Urgency Zoning Ordinance. This ordinance is adopted pursuant to the authority of Section 65858 of the California Government Code and other applicable law.

SECTION 2. Findings. The Oakley City Council hereby finds, determines, and declares as follows:

- A. On February 24, 2015 the City Council adopted Ordinance No.04-15, an urgency ordinance prohibiting issuance of permits or other approvals for massage businesses on an interim basis and directing staff to study possible areas of regulation in light of new State law on the subject.
- B. Ordinance No.04-15 was valid for only a period of 45 days after its adoption, pursuant to Government Code Sec. 65858, pending the scheduling of a noticed public hearing before the City Council.
- C. A noticed public hearing was held and conducted on the date of this Ordinance's adoption, and all interested persons were allowed to speak or submit written comments to the City Council regarding this matter.
- D. Because the study of possible new regulations and zoning ordinance proposals has not been completed, the City Council finds it desirable, and necessary to protect the public health, safety and welfare, to extend the effectiveness of Ordinance No.04-15.
- E. All of the findings made in Ordinance No.04-15 are hereby found to continue to be valid and to apply to consideration and adoption of this Ordinance.

SECTION 3. Imposition of Moratorium.

1. Ordinance No.04-15 is hereby extended and shall continue to be in force and effect for a period of ten (10) months and fifteen (15) days from the date of the adoption of this Ordinance, unless it is earlier repealed or unless it is further extended by procedures specified in Government Code Sec. 65858.

SECTION 4. Effective Date.

This ordinance is hereby declared to be an urgency measure and shall become effective immediately upon its adoption by an affirmative vote of at least four-fifths (4/5) of the members

of the City Council. The City Clerk is directed to publish a copy of this Ordinance in accordance with state law.

SECTION 5. California Environmental Quality Act (CEQA) Finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

SECTION 6. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2015 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Doug Hardcastle, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date