



STAFF REPORT

Date: February 9, 2015
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan Montgomery, City Manager; Derek P. Cole, City Attorney; Dan Gomez, Chief of Police; Joshua McMurray, Senior Planner; Ken Strelo, Senior Planner
Subject: Urgency ordinance temporarily banning new massage businesses

FOR CONSIDERATION AT THE CITY COUNCIL MEETING OF FEBRUARY 24, 2015

Background and Analysis

Since 2009, Oakley has had an ordinance regulating massage parlors and outcall massage service businesses. These regulations are found at Oakley Municipal Code Chapter 8 of Title 5. That ordinance implemented state law that was in effect at the time, SB 731. SB 731 allows cities to have limited regulations regarding the internal operations of massage parlors, but prohibited cities from enacting zoning and land use restrictions that were not similar to other personal and professional services. Thus, for example, zoning regulations for massage parlors had to be the same as zoning regulations for dental offices or nail salons.

Recently, the State has enacted AB 1147, which became law on January 1, 2015. This statute amends the old state law and now gives cities the power to enact zoning regulations for massage businesses that are different than those for other professional and personal service uses.

It is an unfortunate but common experience in other Bay Area cities that some massage businesses are fronts for illicit activity. Many cities believe that it would be good practice to establish special zoning regulations—such as the need for a conditional use permit—for future massage businesses to ensure that all such businesses are legitimate.

Because this is a new era of opportunity for zoning regulations, cities throughout the State are studying what types of new regulations would be best. Various professional organizations, such as city clerks, city managers, police chiefs, city planners and city attorneys, are also looking at this issue. For example, massage parlor regulation will be a topic at the upcoming annual city attorneys' conference in early May.

In this type of situation, cities have the power to declare an interim moratorium on new businesses that might be the subject of the new regulations. This is done by the adoption of an urgency ordinance declaring the interim moratorium, which requires a 4/5 affirmative vote. In this case, the ordinance goes into effect immediately, without the normal 45-day waiting period for effectiveness.



Such urgency ordinances are valid for an initial period of 45 days. After a noticed public hearing, the ordinance can be extended for a longer period. Upon adoption of the proposed interim ordinance, staff's intention would be to schedule a public hearing in the near future and to recommend extension of the Oakley ordinance. When sufficient data has been received about what a permanent ordinance should contain, staff would bring back an permanent regulatory ordinance for your consideration, probably later this year.

The urgency ordinance will apply to any massage business not lawfully operating at the time that the urgency ordinance is adopted. It will prevent any new such business from beginning operation until the permanent regulations are established.

Fiscal Impact

None perceived.

Recommendation and Alternatives

Adopt the urgency ordinance (4/5 vote required). An alternative would be to do nothing, but this would allow new massage businesses to come into town while staff is studying possible zoning regulations, and the new business could very well not comply with the zoning regulations recommended in the future.

Attachment

Urgency ordinance prohibiting issuance of permits, etc. for operation of massage businesses.

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY
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. Since 2009, the City of Oakley has had in effect ordinances regulating the establishment and operation of massage parlors and outcall massage services, such regulations being codified in Chapter 8 of Title 5 of the Oakley Municipal Code. Such regulations were adopted to protect the public health, safety and welfare, and to ensure that no illicit or illegal activities occur.
- B. Oakley's ordinance implements SB 731, adopted by the State Legislature in 2008, which prohibited cities from imposing special zoning and land use requirements not applicable to other personal and professional services on massage parlors.
- C. The State Legislature adopted AB 1147, which became effective on January 1, 2015, which amended SB 731 to once again allow cities to use land use powers to regulate massage establishments differently than other personal or professional service establishments.
- D. The City Council hereby finds it timely, important, and in the interest of public health, safety and welfare for City staff to undertake a comprehensive study of current massage establishment regulations and the City's options for improving the effectiveness of those regulations.
- E. The establishment and operation of any new massage establishment prior to completion of such study and possible adoption of new regulations would create a current and immediate threat to the public health, safety and welfare, in that such operations could cause adverse impacts to surrounding residents and businesses, including but not limited to over-concentration of such businesses, parking, traffic, noise, sanitation, and property values.

SECTION 3. Imposition of Moratorium.

1. During the term of this temporary moratorium, no new massage establishment, as defined in Chapter 8 of Title 5 of the Oakley Municipal Code, including massage parlors and outcall massage services, and also including any such service or business operating as a home occupation, shall be opened and/or operated in any zoning district within the City. The term "new" shall mean any such business not lawfully operating prior to the adoption of this Ordinance.
2. City staff is directed to undertake a comprehensive study to review the existing regulations dealing with massage businesses, present and potential impacts on the community with the creation of new massage businesses, and possible new ordinance proposals for the regulation of new massage businesses.
3. This interim urgency ordinance shall expire and be of no further force or effect 45 days from and after the date of its adoption; provided, however, that after notice and hearing, the City Council may extend this interim urgency ordinance for an additional period of time as authorized by state law.
4. The City Council declares and determines that this interim urgency ordinance is necessary to preserve the public health, safety and welfare of the community.

SECTION 4. CEQA Findings.

The City Council finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this ordinance may have a significant effect on the environment, since this ordinance does not authorize construction or installation of any facilities. This ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA").

SECTION 5. 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.

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