



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

May 24, 2016

SUBJECT: Consideration of Adopting an Interim Urgency Ordinance Establishing a Temporary Moratorium on Massage Establishments

PREPARED BY: Greg Greeson, City Manager
Katrina Gonzales, City Attorney

Recommendation

Staff recommends Council approve the attached resolution adopting an interim urgency ordinance establishing a temporary moratorium on massage establishments. This temporary moratorium is needed in order to provide staff time to prepare for Planning Commission and City Council consideration local regulations governing massage establishments and massage practitioners to protect public health, safety and welfare.

Background

In 2009, the Legislature passed Senate Bill 731 which created the California Massage Therapy Council ("CAMTC"), a new entity with regulatory authority over the certification of massage practitioners throughout the state. SB 731 created uniform standards for these practitioners through a voluntary certification process and also imposed limitations on the authority of cities to regulate and restrict massage establishments.

In 2011, the Legislature passed Assembly Bill 619 ("AB 619"), which further restricted cities' ability to regulate massage establishments. Under specified circumstances, SB 731, as amended by AB 619, preempted cities and counties from imposing many land use controls pertaining to the regulation of massage establishments by transferring the local regulation of massage establishments and massage practitioners to CAMTC.

Since the enactment of SB 731 and AB 619, many jurisdictions throughout the state have seen an increase in the number of massage establishments as a whole, as well as increases in illicit establishments which engage in prostitution and sex trafficking. The increase in such illicit activity has been found to be largely due to the requirement that massage establishments not be regulated more strictly than other land uses that provide professional services, in addition to inadequacies in CAMTC's certification criteria and enforcement practices.

The presence of massage establishments that engage in illicit activities changes the character of neighborhoods, causes blight, and impacts the local economy, as legitimate businesses refuse to operate or locate next to or near such illicit uses. Moreover, these establishments threaten the public health, safety, and welfare in that they operate as fronts for prostitution and potential sex trafficking operations.

In 2014, the Legislature passed Assembly Bill 1147 (“AB 1147”), the Massage Therapy Act of 2014, which took effect on January 1, 2015. AB 1147 restored significant local land use authority over massage establishments by removing SB 731’s provisions preempting local massage regulations and giving cities and counties greater authority to impose reasonable regulations on massage establishments.

Discussion/Analysis:

In recent months, the City has received business license applications from massage establishments that desire to operate within City limits. Because the City does not have a regulatory scheme in place for such establishments, the City has been compelled to process these applications using the City’s conditional use permit procedures, but without the safeguards of having massage establishment-specific regulations in place.

In light of the enforcement issues encountered by other jurisdictions with respect to their regulation of massage establishments and a foreseeable, anticipated increase in business license applications from massage establishments that desire to operate within the City, staff desires to amend the Code by adopting new zoning, land use, and business licensing regulations for massage establishments and massage practitioners that are consistent with AB 1147 to protect the health, safety, and general welfare of all persons from the negative effects attributable to the potentially illicit activities of massage establishments.

Staff believes declaration and establishment of this moratorium is necessary to ensure that the City’s regulation of massage establishments and massage practitioners is not deemed inconsistent with AB 1147, and it is therefore urgently necessary that this ordinance take effect immediately to protect the public health, safety and welfare and to prevent new uses that are inconsistent with the regulations that the City plans to adopt.

This ordinance complies with State law and imposes reasonable regulations that the City Council concludes are necessary to protect public safety, health and welfare of residents and businesses within the City. This ordinance is consistent with the City’s General Plan, the Code, and other applicable zoning ordinances and regulations.

If adopted, this urgency interim ordinance would become effective immediately after it is adopted by the City Council and shall remain in effect for 45 days after it is adopted, unless the City Council extends the effective period of the ordinance in the manner prescribed by Government Code section 65858, subdivision (a). Further, as this is an urgency ordinance, it requires a four-fifths vote to pass.

Attachments:

1. Resolution Adopting an Urgency Ordinance of the City of Wheatland Establishing a Temporary Moratorium on Massage Establishments