Council Meeting of
April 28, 2009

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Police – Adopt an interim urgency ORDINANCE establishing a moratorium on the establishment of massage therapy businesses and the issuance of licenses for massage therapists. Expenditure: N/A.

RECOMMENDATION

Recommendation of the Chief of Police and the Finance Director that City Council adopt an interim urgency ORDINANCE establishing a moratorium on new massage therapy businesses and the issuance of new licenses for massage technicians. The Chief of Police and the Finance Director further recommend that the City Council approve the attached summary of the Ordinance for publication.

FUNDING

Not applicable.

BACKGROUND

Since 2002 there has been a dramatic increase in the number of massage therapy businesses operating in the City of Torrance. This trend has heightened public safety and health concerns based on the criminal activity that can be associated with this type of business. The City and the Police Department have received complaints regarding various massage businesses in the City. Complaints range from nuisance and public eyesore issues to overt prostitution activity. While there are legitimate massage businesses in operation, others are fronts for criminal activity. During its investigations of massage businesses in the City, the Police Department has encountered violations of the Torrance Municipal Code as well as lewd conduct criminal activity.

In 2002, the City had only 14 licensed massage businesses and less than 60 massage technicians in operation. Since that time the number has grown to 36 licensed massage businesses and 261 licensed massage technicians with the City continuing to receive and process new applications. In the past six years, the City's number of licensed massage businesses has more than doubled and its number of licensed massage technicians has more than quadrupled, therefore affecting the quality of life within the community and impacting the Police Department's ability to provide a safe and secure community.

California Government Code section 65858 allows the City to adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a zoning proposal that the City Council, Planning Commission, or the Community Development Department is considering or studying or intends to study within a reasonable time. In general, there are three requirements for the adoption of a Temporary Moratorium Ordinance. First, the Temporary Moratorium Ordinance must be approved by a four-fifths vote. Second, the Temporary Moratorium Ordinance can remain in effect for an initial period of no more than 45 days. Third, to adopt the Temporary Moratorium Ordinance the City Council must make a legislative finding that there is a current and immediate threat to the public health, safety, or welfare, and that approval of additional licenses for massage or acupressure establishments and technicians would result in a threat to the public health, safety, or welfare.

During the initial 45 day period of the moratorium, the City Council may hold an additional noticed public hearing, after which it may extend the moratorium for an additional period of 10 months and 15 days. A second extension – again after a noticed public hearing – of one year is also available. All extensions of the Temporary Moratorium Ordinance moratorium period require four-fifths votes.

ANALYSIS

On September 1, 2009 the State of California will enact new laws that impact how local government regulates massage businesses and massage technicians (SB 731). In anticipation of these laws, the City should establish sound procedures for the licensing of massage businesses as well as zoning requirements that will limit the ability of massage businesses intending to engage in criminal activity from establishing themselves in the City.

Due to the uncertainty of how SB 731 will impact local government, the sharp increase in the number of massage businesses and technicians and the criminal activity associated with some massage businesses, many cities throughout the State have issued moratoriums while they study these issues. Cities such as Pasadena, Arcadia, Ventura, Duarte, San Francisco, Rancho Cordova, Citrus Heights, Walnut Creek, and Berkley have all imposed moratoriums.

Staff recommends City Council adopt the attached interim urgency ORDINANCE establishing a moratorium on the establishment of massage therapy businesses. The interim ORDINANCE spearheads a more comprehensive approach to regulating massage therapy businesses and technicians. During the moratorium staff will study the impact of SB 731, existing Torrance Municipal Codes related to the massage industry, massage business zoning requirements and criminal activity in and around massage businesses.

It is important to note that many of the City's massage businesses are legitimate with properly licensed massage technicians that provide needed services to the community. It is staff's opinion that a moratorium would have a positive effect on currently licensed, legitimate massage businesses so that their establishments continue

to prosper without having to compete with illegitimate businesses/criminal enterprises, and the stigma that the illegal businesses create for the industry.

A letter notifying the City's massage business owners of the proposed urgency ordinance and its scheduled City Council review was sent on April 20, 2009.

Respectfully submitted,

JOHN J. NEU
Chief of Police

CAPT. D.W. Smith

FOR By: Lieutenant Devin Chase
Vice & Narcotics Division Commander

CONCUR:

Eric Tsao
Finance Director

John J. Neu
Chief of Police

LeRoy J. Jackson
City Manager

Attachments:
A. Ordinance
B. Ordinance Summary

Attachment A

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, ESTABLISHING A TEMPORARY MORATORIUM ON MASSAGE OR ACUPRESSURE ESTABLISHMENTS AND MASSAGE OR ACUPRESSURE TECHNICIANS PURSUANT TO GOVERNMENT CODE SECTION 65858 AND SECTION 7 OF ARTICLE XI OF THE CALIFORNIA CONSTITUTION

THE CITY COUNCIL FOR THE CITY OF TORRANCE, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. The purpose of this Interim Urgency Ordinance is to establish a temporary moratorium on massage or acupressure establishments and massage and acupressure technicians in the City of Torrance ("City") to craft a more comprehensive approach to regulating massage or acupressure establishments and massage or acupressure technicians to avoid possible negative effects on the health, safety and welfare of the citizens of the City.

SECTION 2. The City Council enacts this Interim Urgency Ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution, Section 51031 of the California Government Code, and Section 65858 of the California Government Code.

SECTION 3. The City Council of the City of Torrance hereby finds:

A. The City has received applications for the issuance of licenses for massage or acupressure establishments and licenses for massage or acupressure technicians, building permits, land use, zoning and other approvals for the establishment and/or conducting of massage or acupressure establishments.

B. The City is authorized by virtue of the California State Constitution

and California Government Code section 51031 to regulate massage or acupressure establishments by imposing reasonable standards relative to the skill and experience of massage or acupressure establishments and massage or acupressure technicians, and reasonable conditions on the operation of massage establishments.

C. There is significant risk of injury to massage clients by improperly trained and/or educated massage or acupressure technicians, and the City has a legitimate interest in providing reasonable safeguards against injury and economic loss to such massage clients.

D. Massage or acupressure establishments are businesses which involve significant intimate contact between persons which creates opportunities for acts of prostitution and other unlawful sexual activity to occur.

E. The establishment of reasonable standards for the issuance of permits and restrictions on operations of massage or acupressure establishments would serve to reduce the risk of illegal activity.

F. The City is currently studying revised regulations to preserve the public health, safety and welfare as herein stated.

G. There is a current and immediate threat to the public health, safety and welfare because, without the moratorium, a massage or acupressure establishment could be granted a license, or an overconcentration of massage or acupressure establishments could occur, within the City without full protection to residential zones from the potential secondary effects of massage or acupressure establishments.

SECTION 4. The purpose of this Interim Urgency Ordinance is to establish a forty-five day moratorium on the approval or issuance of any license for a massage or

acupressure establishment, massage or acupressure technicians, business license, building permit, or land use, zoning or other approval which pertains to the establishment or conducting of massage or acupressure establishments for the immediate preservation of the public health, safety and welfare.

SECTION 5. For purposes of this ordinance, the terms defined below shall have the following meanings:

A. "Massage or acupressure technician" shall mean every person who is employed as or acts as a massage or acupressure technician, or who provides such other services as enumerated in Article 11 of Chapter 5 of Division 3 of the Torrance Municipal Code for compensation.

B. "Massage or acupressure establishment" means every person advertising by sign, circular, handbill, newspaper, periodical magazine or other publication, or by any other means whatsoever, who, for money or reward, offers to do personally or to furnish the services of other to do the following things:

(1) Treating the external portions of a person by rubbing, stroking, kneading, tapping, pressing, pounding, vibrating or stimulating with the hands, feet, fingers, elbows or other portion of the body, with or without an instrument or device, and with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powders, creams, lotions, or ointments;

(2) Providing or furnishing, conducting or carrying on the business of giving or furnishing baths of any kind or type, including Russian, Turkish,

Swedish, hot air, vapor, electric cabinet, steam or mineral, sweat, salt, Japanese, sauna, Jacuzzi, fomentation or electric baths.

(3) This Article shall not apply to any person who is a State licensed physician, osteopath or chiropractor, or other person who, with a State license, administers any such treatment or services pursuant to a prescribed course of medical treatment of disease or injury, or for physical rehabilitation.

SECTION 6. The City Council hereby enacts this Interim Urgency Ordinance by not less than a four-fifths vote, and in light of the findings set forth in Section 3 above, under the authority granted to it by Article XI, Section 7 of the California Constitution, Torrance City Charter section 726, and Sections 25123(b) and (d) and 65858(a) of the California Government Code which allows the City to adopt an interim urgency ordinance, in order to protect the public safety, health, and welfare, prohibiting any uses that may be in conflict with a zoning proposal that the City Council, Planning Commission or the Community Development Department is considering or studying or intends to study within a reasonable time.

SECTION 7. The City Council hereby finds and determines as follows:

A. The absence of adequate regulation of the operations of massage or acupressure establishments and massage or acupressure technicians, as well as the location of massage or acupressure establishments and massage or acupressure technicians, constitutes an immediate threat to the public health, safety and welfare. The adoption of this Ordinance is necessary for the immediate protection of the public safety, health and welfare.

B. There have been documented cases of Torrance Municipal Code violations, lewd acts, and other inappropriate behavior by massage or acupressure technicians at massage or acupressure establishments in the City.

C. There has been a recent significant increase in the request for business licenses related to massage or acupressure technicians.

D. Medical offices, including acupuncturists and physical therapist offices, massage or acupressure establishments, and day spas and salons currently have no limit as to the number of massage or acupressure technicians they may hire.

E. Based on the foregoing, the City Council finds that issuing business licenses, building permits, or land use, zoning or other approvals which pertain to the establishment or conducting of massage or acupressure establishments prior to the completion of the City of Torrance's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety and welfare and that therefore a temporary moratorium on the issuance of such business licenses, building permits, or land use, zoning or other approvals which pertain to the establishment or conducting of massage or acupressure establishments and massage or acupressure technicians is necessary.

F. A temporary moratorium is not placed on the issuance of renewals of currently valid business licenses. However, for massage or acupressure technicians desiring to obtain business licenses wherein the business license has expired or the business has been closed for more than one year, the moratorium shall be applicable.

G. The City needs time to study the effects Senate Bill Number 731 (Oropeza), entitled "Massage Therapy," will have on the Torrance Municipal Code provisions relating

to massage or acupressure establishments and massage or acupressure technicians and whether any amendments or revisions will be necessary. Senate Bill Number 731 adds Chapter 10.5 to Division 2 of the Business and Professions Code commencing with Section 4600. Senate Bill Number 731 will go into effect on September 1, 2009.

SECTION 8. The City Council hereby directs the Community Development Department, Fire Department and Police Department to consider and study possible means of regulating massage or acupressure establishments and massage or acupressure technicians, including zoning-based regulations and other regulations.

SECTION 9. The City Council finds that this Interim Urgency Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060 (c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 10. If any provision of this Interim Urgency Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 11. This Interim Urgency Ordinance shall take effect immediately upon its adoption by at least a four-fifths vote of the City Council. This Interim Urgency

Ordinance shall continue in effect for forty-five days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice and a hearing pursuant to California Government Code Section 65090, the City Council extends this interim urgency ordinance pursuant to Government Code Section 65858.

SECTION 12. The City Clerk shall certify the adoption of this Ordinance and shall cause a copy of same to be published in the official newspaper of said City within fifteen days of its adoption. This Ordinance shall be published once, with the names of the City Council members voting for and against it, in at least one newspaper of general circulation published in the City of Torrance, State of California.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2009.

_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____
Ronald T. Pohl
Assistant City Attorney

Attachment B

ORDINANCE NO. _____

SUMMARY

On _____, 2009, the City Council of the City of Torrance adopted Ordinance No. _____, which establishes a temporary moratorium on the issuance of business licenses, building permits, or land use, zoning or other approvals which pertain to massage or acupressure establishments or technicians. The Interim Urgency Ordinance took effect immediately upon its adoption. The Interim Urgency Ordinance shall continue in effect for 45 days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice and a hearing pursuant to California Government Code section 65090, the City Council extends this Interim Urgency Ordinance pursuant to Government Code section 65858.

*****City Clerk to add a paragraph stating that copies of the ordinance are available at the City Clerk's office and stating the names of the City Council members that voted in favor and those that voted against.*****