

Council Meeting of
June 9, 2009

PUBLIC HEARING

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

Members of the Council:

**SUBJECT: AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE EXTENDING AN EMERGENCY ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858(A) ESTABLISHING A TEMPORARY MORATORIUM ON MASSAGE OR ACUPRESSURE ESTABLISHMENTS.
EXPENDITURE: N/A.**

RECOMMENDATION

Recommendation of the Chief of Police and the Finance Director that City Council adopt an interim Ordinance as an urgency measure, extending the period of the existing temporary moratorium on new massage or acupressure establishments ("Moratorium Extension Ordinance"). If adopted, the Moratorium Extension Ordinance will take effect immediately upon its passage, and will remain in effect until September 1, 2009; unless prior to the expiration of that time period the City Council elects under Government Code Section 65858 to extend the moratorium period for up to an additional year. The Chief of Police and the Finance Director further recommend that the City Council approve the attached summary of the Ordinance for publication. Finally, the Chief of Police and the Finance Director recommend that the City Council issue this staff report as the "written report describing measures taken to alleviate the condition which led to the adoption of Ordinance No. 3718" as required by Government Code section 65858.

FUNDING

Not applicable.

BACKGROUND

Since 2002 there has been a dramatic increase in the number of massage or acupressure establishments 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 or acupressure establishments in the City. Complaints range from nuisance and public eyesore issues to overt prostitution activity. While there are legitimate massage or acupressure establishments in operation, others are fronts for criminal activity. During its investigations of massage or acupressure establishments 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 or acupressure establishments and less than 60 massage or acupressure technicians in operation. Since that time the number has grown to 36 licensed massage or acupressure establishments and 261 licensed massage or acupressure technicians with the City continuing to receive and process new applications. In the past six years, the City's number of licensed massage or acupressure establishments has more than doubled and its number of licensed massage or acupressure 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.

In view of these considerations, at the April 28, 2009 City Council meeting, the City Council adopted Interim Urgency Ordinance No. 3718, which created a temporary 45 day freeze on new massage or acupressure establishments and the issuance of new licenses for massage or acupressure technicians while City staff began their review of applicable Charter and Torrance Municipal Code provisions, and other laws, in an effort to evaluate what regulations were needed to protect the health, safety and welfare of the community. City staff has used the opportunity created by Ordinance No. 3718 to (i) survey ordinances from a variety of local government agencies throughout California, (ii) thoroughly review existing Charter and Torrance Municipal Code provisions and protocols relating to massage or acupressure establishments and massage or acupressure technicians and zoning regulations, (iii) conduct inspections of massage or acupressure establishments and massage or acupressure technicians, (iv) study the impact of SB 731, and (v) study criminal activity in and around massage or acupressure establishments while conducting enforcement actions of massage or acupressure establishments and massage or acupressure technicians. Toward that end, the proposed Moratorium Extension Ordinance narrows the scope of the originally-enacted 45 day moratorium by excluding from its purview the licensing of massage or acupressure technicians.

During this extension of the moratorium to massage or acupressure establishments Staff will draft a recommended ordinance, which will be brought forward to the City Council.

ANALYSIS

California Government Code section 65858 allows the City to adopt as an urgency measure an interim ordinance that extends an initial 45 day moratorium ordinance for an additional 10 months and 15 days. In general, there are four requirements for the adoption of such an Ordinance. First, the Ordinance must be approved by a four-fifths vote. Second, the moratorium may be extended for a period of no more than 10 months and 15 days. Third, the Moratorium Extension Ordinance must be adopted after notice pursuant to Government Code section 65090 and a public hearing. Fourth, to adopt the

Moratorium Extension 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 establishments would result in a threat to the public health, safety, or welfare.

Staff recommends that the moratorium be extended for 84 days so that the moratorium will expire on September 1, 2009, which is the date that Senate Bill 731 (codified as Business and Professions Code section 4600 et seq.) goes into effect. During the 84 day period of the moratorium extension, the City Council may hold an additional noticed public hearing, after which it may extend the moratorium for an additional year. All extensions of the Temporary Moratorium would require four-fifths votes.

As proposed, the Moratorium Extension Ordinance applies to any new massage establishments. The Moratorium Extension Ordinance does not affect the licensing of massage technicians.

Staff recommends City Council adopt the attached Moratorium Extension Ordinance extending the moratorium on the establishment of massage or acupuncture establishments until September 1, 2009, which is the date that Senate Bill 731 (codified as Business and Professions Code section 4600 et seq.) goes into effect. Staff intends to return to the City Council next month with a new proposed ordinance regulating massage or acupuncture establishments and massage or acupuncture technicians.

Respectfully submitted,

JOHN J. NEU
Chief of Police

By:


Lieutenant Devin Chase

FOR Vice & Narcotics Division Commander

CONCUR:



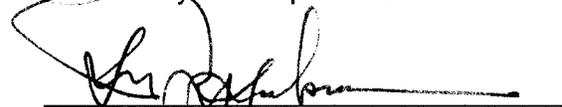
Eric Tsao
Finance Director



John J. Neu
Chief of Police



Jeffery W. Gibson
Community Development Director



LeRoy J. Jackson
City Manager

Attachments:

- A. Ordinance
- B. Ordinance Summary

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, EXTENDING A TEMPORARY MORATORIUM ON MASSAGE OR ACUPRESSURE ESTABLISHMENTS 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 extend a temporary moratorium on massage or acupressure establishments in the City of Torrance ("City") to craft a more comprehensive approach to regulating massage or acupressure establishments and 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. Report of Actions Since Adoption of Ordinance No. 3718. As required by Government Code section 65858(d), the City Council issues the following report describing the measures taken to alleviate the conditions which lead to the adoption of Ordinance No. 3718:

City staff began their review of applicable Charter and Torrance Municipal Code provisions, and other laws, in an effort to evaluate what regulations were needed to protect the health, safety and welfare of the community. City staff has used the opportunity created by Ordinance No. 3718 to (i) survey ordinances from a variety of local government agencies

throughout California, (ii) thoroughly review existing Charter and Torrance Municipal Code provisions and protocols relating to massage or acupressure establishments and massage or acupressure technicians and zoning regulations, (iii) conduct inspections of massage or acupressure establishments and massage or acupressure technicians, (iv) study the impact of SB 731, and (v) study criminal activity in and around massage or acupressure establishments while conducting enforcement actions of massage or acupressure establishments and massage or acupressure technicians. Toward that end, the proposed Moratorium Extension Ordinance narrows the scope of the originally-enacted 45 day moratorium by excluding from its purview the licensing of massage or acupressure technicians.

SECTION 4. 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, 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 reasonable conditions on the operation of massage establishments.

C. 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.

D. 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.

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

F. 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 5. The purpose of this Interim Urgency Ordinance is to extend the moratorium for an additional 84 days on the approval or issuance of any license for a massage or acupressure establishment, 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 6. For purposes of this ordinance, the terms defined below shall have the following meanings:

A. "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 7. 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 8. The City Council hereby finds and determines as follows:

A. The absence of adequate regulation of the operations of massage or acupressure establishments, as well as the location of massage or acupressure

establishments, 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. 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 is necessary.

D. A temporary moratorium is not placed on the issuance of renewals of currently valid business licenses. However, for a business has been closed for more than one year, the moratorium shall be applicable.

E. 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 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 9. The City Council hereby directs the Community Development Department, Finance Department, Fire Department and Police Department to consider and study possible means of regulating massage or acupuncture establishments, including zoning-based regulations and other regulations.

SECTION 10. 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 11. 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 12. 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 eighty-four 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 13. 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.

Mayor of the City of Torrance

ATTEST:

City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____
Ronald T. Pohl
Assistant City Attorney

ORDINANCE NO. _____

SUMMARY

On _____, 2009, the City Council of the City of Torrance adopted Ordinance No. _____, which extended 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. The moratorium does not apply to the issuance of licenses for massage or acupressure technicians. The Interim Urgency Ordinance took effect immediately upon its adoption. The Interim Urgency Ordinance shall continue in effect for 84 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.*****