

Council Meeting of
November 2, 2010

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

Members of the Council:

**SUBJECT: Adopt an interim urgency ORDINANCE amending ORDINANCE
No. 3732 (Moratorium on massage and acupuncture
establishments)
Expenditure: N/A**

RECOMMENDATION

Recommendation of the City Attorney that City Council adopt an Interim Urgency ORDINANCE enacting limited classes of exemptions from the moratorium on the issuance of any permits or licenses for new massage and acupuncture establishments. Staff further recommends that the City Council approve the attached summary of the Interim Urgency Ordinance for publication.

FUNDING

Not applicable.

BACKGROUND

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, Temporary Moratorium Ordinances must be enacted or amended by a four-fifths vote of Your Honorable Body.

On September 14, 2010, Your Honorable Body adopted Interim Urgency Ordinance No. 3728, which established an initial 45 day moratorium period. On October 15, 2010, the City published a report on the steps contemplated to be taken by the City to ameliorate the conditions that required imposition of the moratorium. On October 26, 2010, Your Honorable Body held a second noticed public hearing, after which you adopted Interim Urgency Ordinance No. 3732, extending the moratorium for an additional period of 10 months and 15 days. A second extension – again after a noticed public hearing – of one additional year is also available. All extensions of the moratorium period require four-fifths votes.

During Your Honorable Body's discussion of whether to adopt Ordinance No. 3732 and extend the initial moratorium, the question was raised whether to exempt potential classes of persons from the moratorium. Your Honorable Body directed the city

attorney to return on November 2, 2010 with a proposed ordinance establishing a limited series of exemptions from the moratorium.

ANALYSIS

There are a number of proposed categories of businesses that might be exempted from the moratorium on issuance of new permits and business licenses for massage and acupuncture establishments. Following testimony from interested parties, Your Honorable Body directed staff to return this evening with another proposed Interim Urgency Ordinance establishing exemptions for applicants in the following four categories: (1) persons who had filed an application for a massage or acupuncture establishment business license on or before September 13, 2010, but who had not completed processing of those applications or received License Review Board approval prior to initial imposition of the moratorium on September 14, 2010; (2) persons who had obtained a land use entitlement, a tenant-improvement building permit or other permit or entitlement on or before September 13, 2010, that unambiguously demonstrates the intent to obtain a massage or acupuncture establishment business license; (3) current licensees of massage and acupuncture establishments that wish to transfer an ownership or real property interest to another prospective operator during the moratorium; and (4) current licensees of massage and acupuncture establishments that wish to relocate their existing business to another location within the City.

Staff recommends City Council adopt the attached interim urgency ORDINANCE establishing a limited series of exemptions to the moratorium on the establishment of massage therapy businesses and acupuncture businesses. If adopted, the exemption ordinance will allow the issuance of a limited number of business licenses for massage establishments and acupuncture establishments during the moratorium period.

Should Your Honorable Body adopt the proposed Interim Urgency Ordinance establishing exemptions to the moratorium, a letter will be mailed notifying landlords and licensees of the City's massage and acupuncture establishments of the moratorium and the exemptions to it.

Respectfully submitted,



John L. Fellows III, City Attorney

CONCUR:



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, AMENDING INTERIM URGENCY ORDINANCE NO. 3732 TO ESTABLISH A LIMITED SERIES OF EXEMPTIONS TO THE CITY'S MORATORIUM ON ISSUANCE OF BUSINESS LICENSES FOR MASSAGE AND ACUPUNCTURE 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 establish a limited series of exemptions to the existing moratorium on issuance of business licenses for massage and acupuncture establishments in the City of Torrance ("City") to allow processing and approval of business license applications where it would be inequitable not to allow those applicants to proceed.

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 65858 of the California Government Code, and Torrance City Charter Section 726.

SECTION 3. This ordinance amends Interim Urgency Ordinance No. 3732, which was adopted by the City Council on October 26, 2010.

SECTION 4. The City Council 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 Section 65858(a) of the California Government Code, each of 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 5. Section 7.C of Interim Urgency Ordinance No. 3732 is amended to read in its entirety as follows:

“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 and acupuncture 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 and acupuncture establishments is necessary.

1. Exemptions. A limited series of exemptions to the moratorium on issuance of business licenses for massage establishments and acupuncture establishments is created, as follows:

a.) Pending Business License Applications: Any applicant who filed a business license application for a massage establishment or an acupuncture establishment with the Business License Division of the City’s Finance Department on or before September 13, 2010, will be allowed to complete processing of that application through the City’s License Review Board, and if issuance of a business license for a massage establishment or an acupuncture establishment is approved by the License Review Board, the appropriate business license will be issued immediately following the License Review Board’s determination.

b.) Receipt of other permit or entitlement. Any person who has received a land use permit, a building permit for construction of tenant improvements, or other permit or entitlement from the City that unambiguously demonstrates a contemplated massage establishment or acupuncture establishment use for the premises will be entitled to file and process a business license application for a massage establishment or an acupuncture establishment through the License Review Board, and if issuance of that business license is

approved by the License Review Board, the appropriate business license will be issued immediately following the License Review Board's determination.

c.) Proposed transfers. Any current holder of a business license for a massage establishment or an acupuncture establishment who wishes to transfer a business ownership interest or real property interest (such as a leasehold tenancy or other interest in real property) may request that a proposed transferee be allowed to process a business license application for a massage establishment or an acupuncture establishment through to completion before the License Review Board. Prior to presenting its request that a proposed transferee be allowed to process a business license application, the current licensee must request and receive a clearance from the Torrance Police Department. The Torrance Police Department will deny the current licensee's request if the current licensee has a record of citations or criminal convictions for immoral conduct at the licensee's massage or acupuncture establishment, or if business license suspension or revocation proceedings are pending against the current licensee. A Police Department denial may be appealed to the License Review Board and the License Review Board will determine whether to allow the filing and processing of the proposed transferee's business license application. If the License Review Board approves the proposed transferee's application for a business license, the appropriate business license will be issued immediately following the License Review Board's determination. If any transfer of a business ownership interest or a real property interest is completed PRIOR to issuance of a massage establishment or an acupuncture establishment business license to the proposed transferee, the City will decline to complete processing of that proposed transferee's business license application during the moratorium.

d.) Relocation. The holder of any current massage establishment or acupuncture establishment business license may make application for relocation of the licensee's business to another location within the City and process that proposal through the License Review Board. In determining whether to authorize the proposed relocation and whether to issue a

massage establishment or an acupuncture establishment business license for the licensee's proposed operation at the new location, the License Review Board will consider the proposed new location's proximity to other existing massage and acupuncture establishments, to public and private schools, and to residential uses. The License Review Board may also consider any other factors then under consideration or study by the City's Community Development Department. The License Review Board will determine whether allowing the proposed relocation is appropriate, and if so, will direct the issuance of a massage or acupuncture establishment business license for the new location. If any proposed relocation is completed PRIOR to review and approval of the proposed relocation by the License Review Board, the City will decline to complete processing of the proposed relocation request during the moratorium and no new massage or acupuncture establishment business license will be issued during the moratorium.

2. Finality of License Review Board determination. Any determination by the License Review Board whether or not to issue a massage or acupuncture establishment business license in any of the above four exemption categories, will be final and conclusive. No appeal to the City Council or to any other City authority will be permitted during the moratorium."

SECTION 6. 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 7. 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 that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council

declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 8. This Interim Urgency Ordinance takes effect immediately upon its adoption by at least a four-fifths vote of the City Council. This Interim Urgency Ordinance will continue in effect until the expiration of Ordinance No. 3732 and thereafter will be of no further force and effect unless, after notice and a hearing pursuant to California Government Code Section 65090, the City Council extends Ordinance No. 3732 and this interim urgency ordinance pursuant to Government Code Section 65858.

SECTION 9. 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 _____, 2010.

Mayor of the City of Torrance

ATTEST:

City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____
Patrick Q. Sullivan
Assistant City Attorney

ORDINANCE NO. _____

SUMMARY

On _____, 2010, the City Council of the City of Torrance adopted Ordinance No. _____, which establishes limited classes of exemptions to the moratorium on the issuance of business licenses, building permits, or any other approvals or entitlements that pertain to massage and acupuncture establishments. Ordinance No. _____ is an interim urgency ordinance that took effect immediately upon its adoption. The Ordinance continues in effect for the life of the moratorium adopted by Ordinance No. 3728 and extended by Ordinance 3732, unless, after notice and a hearing pursuant to California Government Code section 65090, the City Council further extends the moratorium 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.*****