

Council Meeting of
August 23, 2011

PUBLIC HEARING

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

Members of the Council:

SUBJECT: Community Development –Adopt an Interim Urgency Ordinance extending a moratorium on the issuance of any permits or licenses for new massage and acupuncture establishments.

Expenditure: N/A.

RECOMMENDATION

Recommendation of the Community Development Director that City Council:

- 1) Adopt an **INTERIM URGENCY ORDINANCE** extending a moratorium on the issuance of any permits or licenses for new massage and acupuncture establishments; and
- 2) Approve an Ordinance Summary for publication.

Funding

Not applicable

BACKGROUND

On August 16, 2011, the City Council conducted a public hearing on an Interim Urgency Ordinance for extending a moratorium on the issuance of any permits and license for new massage and acupuncture establishments. This moratorium initially began on September 14, 2010 and is set to expire on September 14, 2011. During this meeting the Council received testimony from the audience and continued the public hearing to August 23, 2011.

ANALYSIS

A report of the actions taken to alleviate the conditions which lead to the adoption of the Interim Urgency Ordinance for the initial moratorium period and conducting a public hearing was submitted to the City Council as part of the August 16, 2011 agenda packet. The City Attorney's Office and the Community Development Department have been researching other cities' codes regulating massage establishments and working with the California Massage Therapy Council on preparing a zoning ordinance or other enforcement methodologies to minimize the impacts of the illicit activities that have been occurring at some massage establishments.

The Interim Urgency Ordinance has been amended based upon comments from the City Council during the meeting on August 16, 2011. Subsections 7(C)(1)(e) and

7(C)(1)(f) of the Interim Urgency Ordinance have been revised to define sole proprietorship as "a business where the owner is the only person employed by that business to provide massage services." This definition is taken from California Business & Professions Code section 4612(b)(1), one of the Business & Professions Code sections created by Assembly Bill No. 731.

The City Council, by a four-fifths majority vote, may extend the moratorium for an additional year. Extending the moratorium will allow staff to work with the California Massage Therapy Council to develop other enforcement methodologies or to bring forward a zoning ordinance regulating the location of massage establishments before the Planning Commission and City Council. The extension of the moratorium may be superseded by Assembly Bill Number 619 (Halderman), which goes into effect on January 1, 2012.

Staff recommends that the Council adopt the attached Interim Urgency Ordinance extending a moratorium on the issuance of any permits or licenses for new massage and acupuncture establishments for one year to September 14, 2012 and approve an Ordinance Summary for publication.

Respectfully submitted,

JEFFERY W. GIBSON
COMMUNITY DEVELOPMENT DIRECTOR

By 
Gregg Lodan, AICP
Planning Manager

CONCUR:


Jeffery W. Gibson
Community Development Director


John L. Fellows III
City Attorney


LeRoy J. Jackson
City Manager

Attachments: A) Ordinance
B) Ordinance Summary
C) Mayor's Script (Limited Distribution)

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, EXTENDING A TEMPORARY 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 extend a temporary moratorium on massage and acupuncture 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 65858 of the California Government Code, and Torrance City Charter Section 726.

SECTION 3. Report of Actions Since Adoption of Ordinance No. 3732.
As required by Government Code section 65858(d), on August 11, 2011, the City Council issued a report, which is the contained in the agenda item recommending approval of this ordinance and is incorporated into this ordinance by this reference, describing the measures taken to alleviate the conditions which lead to the adoption of Ordinance No. 3732.

SECTION 4. The City Council of the City of Torrance finds:

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

B. At the present time there are no zoning location standards as to where within the City massage and acupuncture establishments can appropriately be located.

C. Massage and acupuncture establishments are businesses that 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 zoning standards for the siting of massage and acupuncture establishments would serve to reduce the risk of illegal activity, and the City is currently studying revised zoning regulations to preserve the public health, safety and welfare.

F. There is a current and immediate threat to the public health, safety and welfare because, without the moratorium, additional massage and acupuncture establishments could be granted business licenses in locations close to sensitive receptors, or an overconcentration of massage and acupuncture establishments could occur within the City, without full protection to residential zones from the potential secondary effects of massage and acupuncture establishments.

SECTION 5. The purpose of this Interim Urgency Ordinance is to extend the existing moratorium for an additional one year.

SECTION 6. 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 7. The City Council finds and determines as follows:

A. The absence of adequate regulation on the location of massage and acupuncture 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 and acupuncture 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 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 on or before September 13, 2010, 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.

e.) Application for a Massage Business or Establishment where Owner has valid State Certificate. An owner of a proposed massage establishment that is a sole proprietorship that has a valid State Certificate as a Massage Therapist or Massage Practitioner from the California Massage Therapy Council will be entitled to file and process a business license application for a massage 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. For purposes of this subdivision, a sole proprietorship is a business where the owner is the only person employed by that business to provide massage services.

f.) Application for an Acupuncture Establishment where Owner has valid State License. An owner of a proposed acupuncture establishment that is a sole proprietorship that has a valid State License as a Acupuncturist from the Acupuncture Board of the Department of Consumer Affairs or has a valid State License from the Medical Board of California will be entitled to file and process a business license application for a 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. For purposes of this subdivision, a sole proprietorship is a business where the owner is the only person employed by that business to provide massage services.

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 six 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.

D. A temporary moratorium is not placed on the issuance of renewals of currently valid business licenses.

SECTION 8. The City Council directs the Community Development Department, Finance Department, Fire Department and Police Department to consider and study possible means of regulating massage and acupuncture establishments, specifically 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 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 11. 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 the temporary moratorium in effect for one year until September 14, 2012, and thereafter will be of no further force and effect.

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 _____, 2011.

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 _____, 2011, 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 one year until September 14, 2012.

*****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.*****

