



Agenda Item No: 5.a

Meeting Date: October 5, 2015

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by: Raffi Boloyan, Planning Manager

City Manager Approval: 

TOPIC: Consideration of the Temporary Moratorium on Massage Establishments and whether to Terminate the Moratorium.

SUBJECT: Adoption of an Urgency Ordinance terminating the temporary Moratorium on the establishment and operation of new massage establishments within the City of San Rafael.

EXECUTIVE SUMMARY:

Since the temporary Moratorium on massage establishments was enacted in January 2015, staff has researched other communities as well as researched potential zoning options to address the proliferation of massage establishments (especially illicit ones). Based on the research, staff recommends that zoning changes would not be an effective tool to significantly address the issue. The issue with massage is related to people who own, work and run a business, not the land use itself. In this case, zoning is not the best tool to regulate those issues. Zoning is meant to regulate land uses, not people or business operations. Zoning is meant to address land use impacts (i.e. light, noise, hours of operation, traffic, parking, land use compatibility). The issue with regulating massage uses is that if you place two massage establishments, a legitimate one next to one that performs illegal activities, zoning would consider them the same. The issues are how the operators run their business and whether they follow sound business practices.

Continued implementation and enforcement of the regulations governing massage establishments in San Rafael Municipal Code Chapter 10.90 ("the Massage Ordinance") is a more effective tool to continue to regulate these businesses and ensure that businesses are operating in a legal and safe manner, consistent with all local and state laws. The City's enforcement efforts for the past 2 years has proven that implementation of the Massage Ordinance, which includes registration, regular inspections and enforcement has addressed many of the issues expressed by the Council, the public and the legitimate massage establishments. In conclusion, staff recommends that based on the study of zoning options, zoning is not an appropriate tool for the city to use for this specific matter and therefore, recommends that the temporary moratorium be terminated.

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

RECOMMENDATION:

Adopt the Urgency Ordinance terminating the temporary moratorium on the establishment and operation of new massage establishments within the City of San Rafael.

BACKGROUND:

At its regular meeting on January 5, 2015, the City Council adopted Ordinance No. 1928, an urgency Ordinance temporarily enacting a moratorium on the establishment and operation of new massage establishments in any zoning district within the City. A massage establishment is a business that offers massage therapy in exchange for compensation. By its terms, the moratorium did not apply to massage establishments that were open and operating with required permits prior to the adoption of the moratorium, to the transfer of such a business to a new owner, or to a new business that had submitted a complete application to the City prior to adoption of the moratorium.

The moratorium was enacted due to recent changes in State law. With the enactment of Senate Bill 731 (Massage Therapy Act) in 2008, the Legislature attempted to address a concern among massage professionals about patchwork regulations for massage practitioners and establishments throughout the State. Prior to enactment of the Massage Therapy Act, local governments in California had broad authority to regulate massage businesses and massage practitioners operating within their jurisdictions, including the power under their zoning ordinances to limit the location of massage establishments to certain zoning districts, and/or to require a conditional use permit to operate. Senate Bill 731 created a program of voluntary certification of massage practitioners by a State-authorized organization, the California Massage Therapy Council (CAMTC), and additionally imposed limits on the ability of cities and counties to regulate those practitioners and businesses, in particular by mandating that local zoning regulations could not distinguish between massage establishments and other personal and professional services.

After the enactment of the Massage Therapy Act, many communities throughout the state experienced problems with implementation of the Act, including a significant and unregulated increase in new massage establishments. The Legislature responded by enacting Assembly Bill 1147, effective as of January 1, 2015, which extended the Massage Therapy Act but also amended it to once again permit cities and counties to use their land use and zoning powers to regulate massage establishments differently than other personal or professional services establishments located within their jurisdictions.

Based on these changes in State law, and ongoing issues in the City with the proliferation of massage establishments, including illicit establishments, in the downtown area, the City Council determined that it was prudent to enact a temporary moratorium on the establishment of new massage establishments, to allow the City to study potential changes to zoning and land use regulations without new massage establishments opening up that might not be allowed if new zoning rules were ultimately to be adopted.

Therefore, Ordinance No. 1928 was adopted on January 5, 2015 as an Urgency Ordinance, imposing a moratorium pursuant to the authority of Government Code section 65858. The moratorium was to allow City planning and legal staff a measured period of time in which to:

- Conduct a thorough review of the impacts of existing massage establishments in various zoning districts,
- Understand the extensive state law governing the regulation of this use,
- Review the applicability of the City's existing zoning regulations to the use,
- Evaluate regulatory schemes studied and enacted by many other California cities, and
- Evaluate the need for any additional zoning ordinance amendments.

Ordinance No. 1928 was effective for 45 days and was set to expire on February 19, 2015. On February 17, 2015, the City Council conducted a noticed public hearing to receive a report describing Staff's work on the issues being studied during the moratorium, and to consider extending the moratorium for an additional period of time as permitted under Government Code section 65858. At this hearing, the Council received input from many massage practitioners and business operators, who testified about the impacts of the moratorium on legitimate massage establishments and asked that the City not extend the moratorium, but instead continue to focus its efforts on enforcement of the City's Massage Ordinance.

Although the City Council was extremely sympathetic to the massage community, it determined that it would be best to continue the moratorium to allow Staff to complete its work, and therefore adopted Ordinance No. 1929, which extended the moratorium for an additional 10 months and 15 days, or until December 31, 2015. However, the Council also directed Staff to report back to the Council at an earlier date should Staff conclude its research before the December 31, 2015 termination of the moratorium.

Through separate action, the City also adopted changes to the Massage Ordinance (SRMC 10.90) in December 2014, modifying certain operating and registration standards and requirements. Also through separate action, the City established fees to cover City staff time for registering and inspecting massage establishments.

ANALYSIS:

Within the initial 45 days of the moratorium, staff identified the potential zoning options that could be studied, and reported those to the Council. Since the enactment of the extension of the temporary moratorium on February 17, 2015, staff has conducted additional research and analysis on potential options for Zoning Ordinance amendments, and whether any zoning ordinance amendments are feasible to address the issue of the proliferation of massage establishments and the issue of illicit establishments.

Staff has reviewed five other similar communities and what they are doing about massage establishments from a zoning perspective (Attachment B). Additionally, Staff has analyzed 6 different options for changes to the City's zoning regulations. (Attachment C). Results of these studies are summarized below and detailed in the attached tables

1. Comparison of Similar Communities

The cities Staff selected to find out about their massage issues and regulations are San Gabriel, Huntington Beach, Palo Alto, San Mateo, and Redwood City. These jurisdictions were chosen for several reasons. San Gabriel is known to have been experiencing a problem with illicit massage establishments, and recently considered zoning amendments to address massage, therefore Staff wished to study the changes that city has made to its regulations. The other cities were chosen because they have demographics similar to San Rafael's in terms of population size, a good mix of land uses, and thriving downtowns.

Staff's conversations with the five jurisdictions noted above, as well as with the CAMTC, revealed that most cities have some massage establishments conducting illicit activities. However, most cities have not expanded their massage regulations beyond statewide requirements, and as the State Legislature is likely to update these requirements again by the end of 2016, they are waiting until then to decide whether or not they will adopt revised massage regulations.

Throughout the state, very few communities have modified their zoning ordinances to require more restrictive land use regulations associated with massage establishments, as they want to remain business friendly and do not want to discourage legitimate massage businesses. Furthermore, most of these communities have also concluded that zoning is a means to address land use compatibility, and not problematic business practices or operators. San Gabriel was the only City in California where zoning changes have been made to date.

Lastly, the study of the 5 communities has revealed that most programs are working reasonably well and usually provide for the enforcement of complaints and violations by massage business either through the Police Department and/or Building Department.

The attached table (Attachment B) illustrates the results of the survey of other communities. Most of the communities are not considering zoning options to address this issue. San Gabriel was having significant problems with massage businesses and adopted a conditional use permit requirement in March 2015. Their staff indicated that the use permit requirement has addressed their proliferation issues by reducing the number of new massage establishments due to the use permit requirement creating financial and time barriers for new massage businesses seeking to open. However, that requirement has also affected all massage businesses, both legitimate and illicit establishments, through the creation of additional process and time required for application for a Use Permit.

San Gabriel also considered a spacing requirement, but found it was too difficult to enforce and would create an impact on legitimate establishments. Huntington Beach did establish a 1,000-foot separation requirement for massage establishments, to spread them out throughout the city rather than concentrate the businesses. Redwood City, San Mateo, and Huntington Beach have not adopted a use permit requirement.

Overall, the general consensus of the other five communities studied is that, zoning does not provide a better tool than an ordinance setting business standards, health and safety standards and requiring registration and inspections ensure that a business is a legitimate massage therapy practice. Zoning is meant to regulate land use (i.e. noise, traffic, smell, hours of operation, parking and compatibility with surrounding uses), not specific business practices. Therefore, in this case, zoning is not the best tool to regulate business practices or illicit activities. What a zoning amendment to require Use Permits for all massage establishments would provide is an additional process and expense for all massage establishments (both legitimate and illicit) to open and operate in a community. Although the additional process would have the side effect of discouraging illicit massage establishments from locating in the City, it would also discourage and impact legitimate operations. The additional Use Permits that would be submitted if a Use Permit requirement were adopted, would also impact the workload of planning division staff, and slow down processing of all planning applications.

2. Consideration of Zoning Options

Staff researched six zoning options that could be considered in San Rafael, as noted below (Attachment C). Each option is described and is followed by a staff summary of the effectiveness of each:

- a. **Require Use Permit for all Massage Establishments** – Use Permits could be required for massage establishments in some or all zoning districts to allow the City to evaluate land use compatibility, hours of operation and concentration/spacing issues. This is not a new tool. At one time, the City required a Use Permit for all massage establishments.

Staff Analysis – Requiring Use Permits for all massage establishments would allow for review of spacing and concentration and allow for additional regulation and oversight. However, this type of regulation and oversight would be geared towards land use matters (noise, hours of operation, traffic and land use compatibility) only, and would not directly regulate or prevent illicit activities, which are more effectively controlled with vigorous enforcement of the City's Massage Ordinance.

The Use Permit requirement would also place additional cost and time requirements on all massage establishments. From a staffing perspective, requiring Use Permits for all massage establishments would further strain the capacity of Planning Division staff, which is already extremely busy, and would therefore impact the timing of processing of all planning applications, affecting many homeowners and businesses in the City seeking permits for their projects.

In addition, Use Permits are a land use entitlement, meaning that once issued, the entitlement runs with the land, irrespective of changes in business ownership. Revoking a Use Permit is a lengthy process that requires making findings of detriment to public health, safety and welfare. The revocation process itself does not provide an easier mechanism to close an illicit business than the current procedure established by the City's Massage Ordinance of revoking the establishment certificate.

Staff's conclusion is that additional control over land use aspects of massage establishments through addition of a Use Permit requirement will not substantially advance the City's primary goal of eliminating illicit massage establishments and practitioners, and therefore would not justify the substantially increased costs this option would impose on all massage practitioners and businesses, and City staff.

- b. **Spacing/Separation requirements for Massage Establishments** – Spacing or separation requirements could be imposed prohibiting new massage establishments from locating within a certain distance of another massage establishment (e.g., 500 or 1,000 ft separation). Recently, the City of San Gabriel in Southern California considered an ordinance establishing spacing requirements, but ultimately did not adopt the standard.

Staff Analysis – This option would reduce the concentration of massage establishments, limiting both legitimate and illicit operations. However, such a regulation would be difficult to implement, requiring constant updating of the inventory of massage establishments. Furthermore, there would be an issue with how to deal with multi-tenant office buildings, where many massage establishments are commonly located. This option would also have the high likelihood of opposition from legitimate practitioners and business operators. From a staffing perspective, this option would create some additional workload for planning staff to map and monitor all massage establishments in the City.

- c. **Modify Zoning district land use tables to limit or prohibit massage establishments in certain zoning districts** – Massage establishments could be limited, or prohibited from certain zoning districts within the City.

Staff Analysis – This option would reduce the areas in which new massage establishments could operate. However, such a regulation would likely result in concentrating a large number of massage establishments into certain areas of the City, and might also hamper enforcement against illicit establishments by putting them in areas that have less visibility and oversight from public view. Like all other options, this option would not distinguish

between legitimate and illicit establishments, but would apply to all. Staffing implications of this option would not be extensive -- mainly the time required to prepare the draft amendments -- and is estimated to be 20-40 hours.

Staff has concluded that this option would not result in a clear improvement over the status quo and could produce additional undesirable impacts on legitimate practitioners and on the City's code enforcement efforts.

- d. **Consider exemption from zoning changes for Sole Providers** - Any of the zoning options noted here could be coupled with an exemption for sole proprietors/sole providers from Use Permit or spacing requirements.

Staff Analysis – This option would simplify the permitting process for sole providers. This option could lead to more businesses being formed as sole providers, so as to avert the land use regulations. This option may face more opposition from legitimate, non-sole provider establishments.

- e. **Combination of options above** – A likely combination would be to require a Use Permit for all Downtown massage establishments, including spacing requirements for establishments not located in multi-tenant office buildings, but not elsewhere in the City.

Staff Analysis – This option would provide an increased level of local control over land use aspects of a massage establishment, with less risk of concentrating massage establishments in discrete areas of the City. However, this option would require additional processing time and application fees. More significantly, as noted above, Use Permits do not control poor business operations or illicit activities. Although it would create an additional permit type that the City could revoke, the City already holds the ability to revoke the massage registration through our existing Massage Ordinance and this would be duplicative. This option would also impact Planning Division staff time in order to process Use Permits.

- f. **Status Quo with primary reliance on enforcement of existing Massage Ordinance** - No change to the current zoning regulations or maps, which allow massage establishments as a permitted use in nearly all commercial and mixed use zoning districts. In some downtown zoning districts, massage establishments are allowed only on a 2nd floor or above or rear ground level. The status quo also includes on-going implementation and enforcement of the City's Massage Ordinance.

Staff Analysis – This option would continue the current zoning schemes and regulation of massage establishments primarily through enforcement of the regulations and procedures in the Massage Ordinance. The Status Quo option may not completely address neighborhood or business concerns, and there remains a potential for proliferation. However, during the moratorium period, efforts to enforce the City's existing massage regulations have proven effective in addressing the issue of massage establishments that undertake illicit activities, and have resulted in the closure of 14 establishments that were found to be repeatedly in violation of the Massage Ordinance.

Status of On-Going Implementation/Enforcement of Massage Ordinance:

The Council will recall that in June, 2013, implementation of the Massage Ordinance was assigned to the Community Development Department's Code Enforcement Division (from the Police Department). Given that Community Development did not have the staffing to provide this new service, an outside

contractor was hired (CSG Consultants) to create and implement the Massage Ordinance registration and inspection program. This contract was set for a one year trial basis. After the first year, the program was extended for an additional two years (ending in June 2016). A summary of the program to date (through September 10, 2015) is provided in Attachment D and summarized as follows.

The City's enforcement efforts began with staff creating an entire program (forms, process, database, procedures, etc), then inventory all the establishments, and register all existing businesses. However, once up and running, the City's efforts became effective and regular inspections were conducted. Since the Code Enforcement Division, through its contractor, has taken over the implementation of the Massage Ordinance, the City has performed 978 inspections, observed 618 violations of the ordinance, and issued 218 citations in the amount of \$134,564 (\$127,094 of which has been collected). To date, the City has revoked the required massage establishment certificate or operator permit for 3 massage establishments and closed their operations, and suspended the permit for a fourth, which recently turned into a full revocation and closure. Overall, City enforcement has resulted, through revocation or voluntary cessation, in the closure of 14 massage establishments consistently operating in violation of the City's Massage Ordinance. At this time, the program is continuing and is funded through the end of this fiscal year (June 30, 2016). Prior to the end of this contract, staff will return to the Council to seek direction on the future of the program.

Based on Staff's analysis of the zoning options described above, and the results of the enforcement program, Staff believes that continued enforcement of the City's Massage Ordinance is the more effective way to prevent illicit operations and that zoning modifications would not be of benefit to the City.

CONCLUSION:

There have been significant changes in State law in recent years, including the restoration of the City's powers to impose land use regulations on massage establishments under Assembly Bill 1147. Moreover, the City's Zoning Ordinance permits the City to foster harmonious and workable relationships among land uses and reduce or remove negative impacts caused by inappropriate location of uses. Therefore, the City had a responsibility to all interested persons, including the operators of existing and proposed massage establishments, potentially affected surrounding residents and businesses, and the public at large, to conduct a comprehensive study of current massage establishment land use regulations, and the City's options and feasibility for improving the effectiveness of those regulations.

The Council adopted this temporary moratorium knowing that, after study, Staff might recommend that no changes to the City's zoning regulations should be made. As detailed in the report and analysis above, the research has revealed that zoning is not a beneficial tool in regulating massage establishments, and that it would be more effective for the City to continue to address the issues related to massage through the on-going enforcement of the City's Massage Ordinance.

Therefore, staff has prepared, and recommends that the Council adopt, an urgency ordinance terminating the temporary moratorium on the establishment and operation of new massage establishments. As an urgency Ordinance, the Ordinance must be approved by a 4/5 vote of the Council, and would become effective immediately upon adoption.

COMMUNITY OUTREACH:

Throughout the temporary moratorium, and even beforehand, staff has periodically met with the massage professionals organized as the Massage Ordinance Advisory Committee (MOAC), to answer their questions, listen to their comments and concerns and to provide updates. Most recently, staff met with the leadership of MOAC and the Executive Director of the Downtown Business Improvement

District (BID) on September 9th, and provided them with the results of the staff research on Zoning options and an update on the plans for the City Council presentation on September 21st as well as this hearing.

Notice of this meeting was provided in the City Manager's "Snap Shot" email list, and posted on the City's web pages related to the massage moratorium. In addition, notice of this public hearing to consider terminating the temporary moratorium was provided by a notice in the Marin IJ on Saturday September 26, 2015 (Attachment E) and mailing of public hearing notice to all existing massage establishments, the Downtown BID, Chamber of Commerce and other interested parties on Friday, September 25, 2015.

Staff has not received any written or verbal comments as a result of the noticing for this hearing. Any communication that may be received after the reproduction of the report will be forwarded to the Council under separate cover.

FISCAL IMPACT:

There will be no direct fiscal impact of the Council's adoption of the ordinance terminating the massage moratorium. The only fiscal impact related to the moratorium is the staff time to conduct the research and analysis and prepare the reports on the matter. It is estimated that 75 hours of staff time have been used through the moratorium research and analysis and reporting, Fiscal impact of the city's current and on-going enforcement efforts or future enforcement efforts are or will be addressed through the staff reports related to those items.

OPTIONS:

The City Council has the following options:

1. Adopt the Urgency Ordinance terminating the moratorium effective immediately (*staff recommendation*)
2. Do not adopt the Urgency Ordinance and direct staff to return to the Council prior to the current expiration date (December 31, 2015) with additional information or analysis.
3. Do not adopt the Urgency Ordinance and direct staff to return with a revised Ordinance extending the temporary moratorium for 1-additional year past the current expiration date of December 31, 2015.

RECOMMENDED ACTION:

By at least a 4/5 vote, adopt an Urgency Ordinance, terminating the temporary moratorium on the establishment and operation of new massage establishments.

ATTACHMENTS:

	Page # (Stamped)
A. Draft Ordinance Extinguishing the Temporary Moratorium	9
B. Table - Comparison of Cities Massage Enforcement	13
C. Table - Review of Options (Alternative Zoning Options)	17
D. Status Report on Massage Inspection Program	20
E. Proof of Publication of Public Hearing Notice	22

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL ADOPTED AS AN URGENCY MEASURE TERMINATING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF NEW MASSAGE ESTABLISHMENTS WITHIN THE CITY OF SAN RAFAEL

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL, DOES ORDAIN AS FOLLOWS:

WHEREAS, the City Council has broad discretion pursuant to Article III, Sections 16 and 59 of the City Charter; California Constitution Article XI, Section 5; and the general law of the state, including but not limited to the California Planning and Zoning Law (Gov. Code §§65000 et seq.), to legislate for public purposes and for the general welfare, including but not limited to matters of public health and safety; and

WHEREAS, since the 1970's, California Government Code section 51030 has authorized California cities and counties to adopt ordinances to regulate the business of massage through a licensing process, and pursuant to such authority, the City of San Rafael historically has imposed various regulations on massage and/or bodywork offices or establishments (hereafter "massage establishments") operating within the City. Those regulations are currently codified as Chapter 10.90 of the San Rafael Municipal Code entitled "Massage Therapy"; and

WHEREAS, in 2008 the State Legislature adopted Senate Bill 731, the Massage Therapy Act, establishing a new statutory scheme for a voluntary certification program for massage professionals that would entitle them to rely on a uniform statewide set of occupational regulations and that would, for massage establishments where all the massage practitioners are so certified, prohibit cities from imposing special zoning and land use requirements not applicable to other personal and professional services; and

WHEREAS, since 2010, the City has been regulating massage professionals and massage establishments in compliance with the Massage Therapy Act, but has nevertheless continued to receive complaints from members of the public about the growth in the number of massage establishments within the City, including complaints of their over-concentration and adverse impacts in the Downtown area; and

WHEREAS, Assembly Bill 1147, which became effective on January 1, 2015, amended the Massage Therapy Act to restore to cities the authority to use their land use powers to regulate massage establishments differently than other personal or professional services establishments located within their jurisdictions; and

WHEREAS, with the restoration of the City's ability to regulate massage establishments through its zoning powers, the City Council determined on January 5, 2015 that it was timely and important for City staff to undertake a comprehensive study of the City's massage establishment

regulations, and the City's options for improving the effectiveness of those regulations through new or modified zoning regulations; and by a four-fifths (4/5) affirmative vote of its members pursuant to Government Code section 65858, adopted Ordinance No. 1928, a 45-day moratorium on the establishment of new massage establishments within the City. The Council adopted the moratorium to allow City Staff to undertake a comprehensive study to: (1) determine the number and location of existing massage establishments within the City; (2) review and analyze the provisions of the Zoning Ordinance and other laws and regulations applicable to massage establishments; (3) study and research options for alternative land use regulations; and (4) draft any recommended new or amended land use regulations governing massage establishments for consideration by the City Council; and

WHEREAS, on February 17, 2015, the City Council found that, despite testimony from massage establishment owners and practitioners that the temporary moratorium was imposing a substantial burden on their ability to practice their profession in San Rafael, additional time was required for City staff to thoroughly study the issues related to regulation of massage establishments and to draft any appropriate amendments to the City's Municipal Code for consideration by the City Council, and the Council therefore adopted Ordinance No. 1929, extending the temporary moratorium adopted in Ordinance No. 1928 through December 31, 2015; and

WHEREAS, City staff has now completed the comprehensive study of possible changes to the City's Municipal Code as required under Ordinance Nos. 1928 and 1929, and has recommended to the City Council that no changes be made to the City's Zoning Ordinance or other land use regulations; and

WHEREAS, City staff has recommended that the temporary moratorium imposed by Ordinance No. 1928 and extended by Ordinance No. 1929 be terminated as an urgency measure, in order to eliminate immediately any burdens imposed by that moratorium on persons wishing to practice massage therapy in San Rafael; and

WHEREAS, the City Council hereby finds that this ordinance effects a minor alteration to land use limitations and adoption of the ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15305 of Title 14 of the California Code of Regulations.

NOW, THEREFORE, the City Council of the City of San Rafael does hereby ordain as follows:

DIVISION 1. FINDINGS.

Pursuant to the provisions of Government code section 65858, the City Council of the City of San Rafael hereby finds as follows:

1. The above recitals are true and correct and are incorporated herein by reference.

2. Based on the recitals above, the City Council hereby finds and determines that the immediate termination of the temporary moratorium on the establishment and operation of new massage establishments in San Rafael, adopted by Ordinance No. 1928 and extended by Ordinance No. 1929, is appropriate and necessary.

3. This ordinance is necessary as an urgency measure to preserve the public peace, health or safety.

DIVISION 2. TERMINATION OF MORATORIUM.

The temporary moratorium adopted by City of San Rafael Ordinance No. 1928 and extended by City of San Rafael Ordinance No. 1929, is hereby terminated, effective immediately upon adoption of this Ordinance.

DIVISION 3. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared invalid.

DIVISION 5. EFFECTIVE DATE.

This ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption by an affirmative vote of at least four-fifths (4/5) of the members of the City Council pursuant to Government Code section 65858. The City Clerk is directed to publish forthwith a copy of this Ordinance, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

GARY O. PHILLIPS, Mayor

ATTEST:

ESTHER C. BEIRNE, City Clerk

I, ESTHER C. BEIRNE, City Clerk of the City of San Rafael, certify that the foregoing Ordinance was passed by the City Council of the City of San Rafael, California, by a vote of at least four-fifths (4/5) of the members thereof, at a regular meeting held on Monday, the 5th day of October, 2015, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ESTHER C. BEIRNE, City Clerk

COMPARISON OF CITIES - MASSAGE ESTABLISHMENTS
September 2015

CRITERIA	SAN RAFAEL	SAN GABRIEL	SAN MATEO	PALO ALTO	REDWOOD CITY
Population Size (2013 census)	~ 59,000	~ 40,275	~ 101,000	~ 67,000 – City ~ 13,809 – <u>Stanford</u> ~ 80,809 Total	85,000 persons
# of Massage Establishments	79	59	51	30	22
Zoning Districts Permitted	GC, NC, O, C/O, R/O, 4SRC, HO, CSMU 2/3MUE, 2/3MUW, WEV*, 5/M R/O	Commercial C1 & C3 zoning districts only.**	Commercial zoning districts only.	Commercial downtown zoning districts only.	Central Business District (CB), Commercial Office District (CO), Mixed-Use Neighborhood District (MUN), Mixed-Use Corridor District (MUC), Mixed-Use Live-Work (MULW)
Spacing Requirement	None. However, on primary downtown street, massage uses are only permitted on Fourth Street frontage, if located in a rear ground level demised space behind a separate retail demised space with separate entrance or on the 2 nd floor or above.	None – considered spacing requirements and found it was too difficult to enforce as well would receive opposing feedback from legitimate establishments.	None.	None.	No
When was Massage Ordinance last revised?	December 2014 Massage ordinance was updated to reflect changes in state law governing massage as well as address loopholes and	March 2015	2012 – To meet State requirements.	2012 – To meet State requirements.	2011 (to match State reqts) & 2014

COMPARISON OF CITIES - MASSAGE ESTABLISHMENTS
September 2015

CRITERIA	SAN RAFAEL	SAN GABRIEL	SAN MATEO	PALO ALTO	REDWOOD CITY
	<p>gaps discovered during 1.5 years of implementation</p> <p>In addition, a 45-day moratorium was enacted on January 5, 2015 due to recent State Law (Massage Therapy Act) so that the City may study potential changes to zoning and land use regulations. On February 17, 2015, City Council adopted Ordinance No. 1929 to extend the moratorium until December 31, 2015 prohibiting any new massage establishments, including sole proprietors, within any zoning district. There are a few exemptions to this.</p>				
Issues with Illegal Activities Occurring in Massage Establishments?	Yes.	They did prior to revising Massage Ordinance 3/18/15. Revised Ordinance requires a CUP which makes it a bit more difficult to obtain and start the business. Since adopting the revised Massage Ordinance, only 1 establishment has applied for CUP. The	No evidence of illegal activities occurring in massage establishments.	No evidence of illegal activities occurring in massage establishments.	Yes, evidence of commercial sex

COMPARISON OF CITIES - MASSAGE ESTABLISHMENTS
September 2015

CRITERIA	SAN RAFAEL	SAN GABRIEL	SAN MATEO	PALO ALTO	REDWOOD CITY
		cost and time of a Use Permit has discouraged all massage to apply			
Code Enforcement Dedicated to Issue	Yes. Currently/temporarily. To continue would be a budget cost issue to City. How does City want to spend taxpayer's money.	No.	No.	No. Not regulating as there aren't any specific problems.	Building Dept for health & safety, and Police Dept for prostitution
Which Department Enforces Massage Establishments?	CDD – Code Enforcement	Police Dept enforces criminal activity at massage businesses. Code enforcement handles civil matters.	Police Dept	Police Dept	Building Dept & Police Dept

Notes:

*Permitted on Fourth Street frontage, allowed in a rear ground level demised space behind a separate retail demised space with separate entrance or on the 2nd floor or above.

City of San Gabriel: Additional note about discussions with their City Staff: Since the March 2015 revised Ordinance was adopted, only one massage establishment has applied for a CUP.

The California Massage Therapy Council stated that in general, most jurisdictions adopted a revised Massage Ordinance to match State regulations and are waiting for new ones to be adopted which is expected next year (2016) and then may modify their own and may or may not include Zoning changes. 145 cities within California require certification of their massage therapists. Some jurisdictions believe that imposing Zoning requirements and/or CUP is applying a temporary solution to a problem that will manifest itself in others ways down the road.

City and County of San Francisco has amended both their Massage Ordinance and Zoning Ordinance (requiring CUP on all massage establishments), and has never required CAMTC State Certification. San Francisco is allowing “legitimization” for existing businesses that were fully compliant on February 28, 2015. However, many therapeutic massage therapy businesses went through extensive permitting processes prior to SB-731 but after CAMTC exemptions to local ordinances went into effect, their permits, CUP's, etc. Businesses that perform illegal activities have no problem paying fines, CUP's, etc. However, individual massage therapists are unable to establish, or continue to establish, a massage

COMPARISON OF CITIES - MASSAGE ESTABLISHMENTS
September 2015

business as it becomes too expensive due to fees associated with CUP's (which take 6 or more months to be approved), inspections, occupancy, and any permits associated with it.

County of San Mateo and cities within the county: Not imposing a Use Permit requirement. Require a revocable registration on businesses and require that all massage therapists be certified. Revocable for cause to get rid of problem establishments.

City of Huntington Beach: Established a 1,000' spatial limit between massage establishments in order to cap the number of massage businesses in the city. They felt spreading out the massage establishments throughout the city rather than concentrate in one area.

ZONING ORDINANCE AMENDMENTS – MASSAGE ESTABLISHMENTS
Review of Options (Alternatives)
September 2015

OPTION (ALTERNATIVE)	ADVANTAGE – PRO	DISADVANTAGE – CON	STAFF IMPLICATIONS
OPTION 1 <u>No new regulation</u> Status quo with continued contractual code enforcement	<ul style="list-style-type: none"> No change to current zoning regulations or maps Permitted in most commercial and mixed use zoning district, although require them to be on 2nd floor or above or rear ground level in some downtown zoning districts. During moratorium, the enforcement program has proven to be an effective tool in regulating massage businesses and resulted in closure of 14 troublesome sites. 	<ul style="list-style-type: none"> Does not address neighborhood/resident concerns. Potential for proliferation of use. Continued challenges for code enforcement and Police. 	<ul style="list-style-type: none"> Budget costs for staff implementation of current massage ordinance code enforcement and Police.
OPTION 2 <u>Discretionary Review</u> Require Use Permit for all massage establishments Use Permits could be required for all massage establishments in some or all zoning districts to allow the City to evaluate land use compatibility, hours of operation and concentration/spacing issues.	<ul style="list-style-type: none"> Use Permits could be required for all massage establishments in some or all zoning districts to allow the City to evaluate land use compatibility, hours of operation and concentration/spacing issues. This is not a new tool. At one time, the City required a Use Permit for all massage establishments. Would allow review of spacing and concentration of establishments through process. Additional regulation and oversight through more local control over the establishment and may impose specific conditions catered to the said business. May revoke the CUP if establishment becomes a problem. 	<ul style="list-style-type: none"> Creates additional cost and permitting time for therapeutic massage businesses owners/operators. Likelihood of opposition by massage businesses to more restrictive regulations. Creates additional process time (6-12 weeks) and costs (\$1,420 for Admin level UP or \$2,476 for Zoning Admin level Use Permit) for all massage businesses. Issues with the massage establishments that perform illegal activities are not land use matters. Need to evaluate which existing businesses to grandfather or amortize. 	<ul style="list-style-type: none"> Staff time unknown at this time, except that action will require: Contact all known Massage Establishment operators to initiate review. (est. 2 hrs/each) Processing individual Use Permit, as required (est avg of. 10-15hrs/each) Will slow down processing of all other planning applications, with additional workload and no additional staff, effecting other businesses and homeowners and their planning permits or inquiries.

<p>OPTION 3 <u>Spacing/Separation Requirements</u> Require for all massage establishments</p>	<ul style="list-style-type: none"> • Impose spacing or separation requirements on massage establishments to not locate within a certain distance of another massage establishment (e.g., 500 or 1,000 linear foot separation). • Would reduce concentration of massage establishments as time goes on. 	<ul style="list-style-type: none"> • May prohibit massage business for some that would otherwise be allowed. • Likelihood of opposition to more restrictive regulations. • Difficult to deal with how separation would work in a multi-tenant office building, in which massage establishments are common. • Since spacing would be a development standard, it would apply to therapeutic massage establishments and businesses where illegal activities occur. 	<ul style="list-style-type: none"> • Staff time continuously keeping track of all massage establishments and identifying locations on a graphic and maintaining data.
<p>OPTION 4 <u>Modify Zoning District Land Use Tables</u> Limit or prohibit massage establishments from certain zoning districts within the City.</p>	<ul style="list-style-type: none"> • Would reduce the areas in which new massage establishments could operate. • Tables could be modified so as to focus massage uses on areas deemed more appropriate. 	<ul style="list-style-type: none"> • May prohibit massage business for some that would otherwise be allowed. • Likelihood of opposition to more restrictive regulations. • This is a land use regulation and would not allow for differentiation between therapeutic massage businesses and businesses performing illegal activities. All massage establishments would be subject to the land use limitations. • Would concentrate massage uses and push into business into smaller areas. 	<ul style="list-style-type: none"> • Staff time to prepare staff report recommendation, and ordinance(s) for modified Zoning District Land Use Tables.
<p>OPTION 5 <u>Exemption from Zoning</u> An addition to any option # 2-4 above, where sole proprietors/sole providers. Could be made exempt from the regulation</p>	<ul style="list-style-type: none"> • Simplifies process for sole proprietors/sole providers. 	<ul style="list-style-type: none"> • May prohibit massage business for some that would otherwise be allowed. • Could lead to more businesses being formed as sole provider/proprietor, so as to avert the new land use regulation. 	<ul style="list-style-type: none"> • Staff time to prepare staff report recommendation, and ordinance(s) for modified Zoning District Land Use Tables.
<p>OPTION 6 <u>Combination of Options Above</u></p>	<ul style="list-style-type: none"> • More local control over the establishment and may impose specific conditions catered to the said business. 	<ul style="list-style-type: none"> • May prohibit massage business for some that would otherwise be allowed. 	<ul style="list-style-type: none"> • Staff time unknown at this time, except that action will require:

Use Permit requirements for all massage establishments with spacing requirements in Downtown districts only, other than multi-tenant medical office buildings.	<ul style="list-style-type: none"> • May revoke the CUP if establishment becomes a problem. 	<ul style="list-style-type: none"> • Likelihood of opposition to more restrictive regulations. • Creates additional process time (6-12 weeks) and costs (\$1,420 for Admin level UP or \$2,476 for Zoning Admin level Use Permit) for all massage businesses. • Issues with the massage establishments that conduct illegal activities are not land use matters. • Since spacing would be a development standard, it would apply to legitimate or illegitimate massage establishments. • Zoning is intended to evaluate land use matter, not business operators, or business practices or illegal activities. 	<ul style="list-style-type: none"> • Contact all known Massage Establishment operators to initiate review. (est. 2 hrs/each) • Processing individual Use Permit, as required (est avg of. 10-15hrs/each) • Will slow down processing of all planning applications, with additional workload and no additional staff, affecting other businesses and homeowners and their planning permits or inquiries. • Staff time continuously keeping track of all massage establishments and identifying locations on a graphic.
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Massage Inpection Program (MIP) Data Summary

For Date Range: 2/17/2015 to 9/24/2015

Since Program Inception

Businesses Registered	20
Businesses Pending	0
Businesses Closed	6
Businesses Revoked	2
Businesses Closed due to City Action	5
Businesses Suspended (Current)	0
Inspections Performed	334
Violations Observed (see below)	105
Citations Issued	21
Citations Issued \$	\$16,437.50
Citations Paid \$	\$29,266.65
Citation Late Fees Paid \$	\$0.00

Businesses Registered	79
Businesses Pending	3
Businesses Closed	32
Businesses Revoked	3
Businesses Closed due to City Action	11
Businesses Suspended	
Ever	1
Current Suspended	0
Inspections Performed	978
Violations Observed	618
Citations Issued	218
Citations Issued \$	\$134,564.06
Citations Paid \$	\$127,094.06
Citation Late Fees Paid \$	\$1,224.44

Current Registered CMPs: 189

Violations from 2/17/2015 to 9/24/2015

Violations -CITED

Beds; Residential use; Sleeping; Prohibited	11
Employee Attire: Transparent, See-through	5
Exposure Prohibited	5
Patron Genitals; Draping Required; Contact Prohibited	5
Display of Permit/Cert. & I.D. on CMT & Rec. Area; Req.	3
Interior Doors; Locks prohibited	3
Main Entry Door, Reception Area & Unlocked Entry; Req.	3
Rooms, tubs, showers, sanitized after each use	3
Services & Costs; Posting Required	3
Employment of Non-Certified Practitioner	2
Patron & Visitor clothing; Nudity, underclothing intimate apparel; prohibited	2
Visitors in areas other than Reception Area or toilets; Prohibited	2
Certification by California Massage Therapy Council required for practitioners	1
Certification by CMTTC required for practitioners.	1
Employment of Non-Listed practitioner	1
Exterior Windows; Obstructions Prohibited	1
Operation of Establishment without Valid Certificate or Permit; Prohibited	1
Sanitary Towels; Closed Receptacles & Cabinets Required	1

Violations -NO STATUS SELECTED

Exposure Prohibited	1
Patron Genitals; Draping Required; Contact Prohibited	1
Services & Costs; Posting Required	1

Violations -Non-Compliance

Beds; Residential use; Sleeping; Prohibited	1
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Violations -WARNED

Display of Permit/Cert. & I.D. on CMT & Rec. Area; Req.	8
Beds; Residential use; Sleeping; Prohibited	5
Visitors in areas other than Reception Area or toilets; Prohibited	5
Compliance w/Building & Fire Codes Required	3
Containers; Contamination; Labeling; Closed	3
Lighting in Massage Rooms; equivalent to at least one (1) 40-watt light; requi	3
Cleanliness; Proper Disinfecting	2
Combs; Disinfecting Required	2
Display of Permit & Certification – On-person & Reception Area	2
Employment of Non-Certified Practitioner	2
Main Entry Door, Reception Area & Unlocked Entry; Req.	2
Services & Costs; Posting Required	2

NOTE: Business Closed # includes Revoked and Closures due to City Action

Thursday, Septen

MIPDataByDate.rpt

Violations -WARNED

Employment of Non-Listed practitioner	1
Front Door/Reception Area Required; One patron-entry Door Allowed	1
Interior Doors; Locks prohibited	1
Laundering requirements; 140 degrees fahrenheit, etc	1
Liquids and creams: clean, uncontaminated, closed, containers; required	1
Patron & Visitor clothing; Nudity, underclothing intimate apparel; prohibited	1
Patron Genitals; Draping Required; Contact Prohibited	1
Sanitary Towels; Closed Receptacles & Cabinets Required	1
Shower Footwear, and Disinfecting Required	1

**CITY OF SAN RAFAEL
NOTICE OF PUBLIC HEARING**

You are invited to attend the City Council hearing on the following project:

PROJECT: **Termination of Temporary Moratorium on New Massage Establishments -**
Consideration of an Urgency Ordinance Terminating a Temporary Moratorium on
the establishment and operation of new massage establishments within the City of
San Rafael; File No.: P14-018

As required by state law, the project's potential environmental impacts have been assessed. This urgency ordinance terminating the temporary moratorium will not have a significant effect on the environment since the ordinance effects a minor alteration to land use limitations; therefore adoption of the ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305.

HEARING DATE: **Monday, October 5, 2015 at 7:00 P.M.**

LOCATION: San Rafael City Hall – City Council Chambers
1400 Fifth Avenue at "D" Street
San Rafael, California

WHAT WILL HAPPEN: You can comment on the project. The City Council will consider all public testimony and decide whether to adopt the urgency ordinance terminating the temporary moratorium.

IF YOU CANNOT ATTEND: You can send a letter to the Community Development Department, Planning Division, City of San Rafael, 1400 Fifth Avenue, San Rafael, CA 94901. You can also hand deliver it prior to the meeting.

FOR MORE INFORMATION: You can view the staff report after 5:00 p.m. on the Thursday before the meeting at <http://www.cityofsanrafael.org/meetings>. More information on the current moratorium can be found at www.cityofsanrafael.org/massage

SAN RAFAEL CITY COUNCIL

/s/ Esther Beirne
Esther Beirne
CITY CLERK

At the above time and place, all letters received will be noted and all interested parties will be heard. If you challenge in court the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered at, or prior to, the above referenced public hearing (Government Code Section 65009 (b) (2)).

Judicial review of an administrative decision of the City Council must be filed with the Court not later than the 90th day following the date of the Council's decision. (Code of Civil Procedure Section 1094.6)

Sign Language and interpretation and assistive listening devices may be requested by calling (415) 485-3085 (voice) or (415) 485-3198 (TDD) at least 72 hours in advance. Copies of documents are available in accessible formats upon request.

Public transportation to City Hall is available through Golden Gate Transit, Line 22 or 23. Para-transit is available by calling Whistlestop Wheels at (415) 454-0964.

To allow individuals with environmental illness or multiple chemical sensitivity to attend the meeting/hearing, individuals are requested to refrain from wearing scented products.