

CITY CLERKS DEPARTMENT
Marci Reyes, City Clerk



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Mayor – Stephen B. Hill

Council Members

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**NOTICE AND CALL OF SPECIAL MEETING OF
THE KERMAN CITY COUNCIL**

NOTICE IS HEREBY GIVEN that a Special Meeting of the City Council of the City of Kerman is hereby called.

Date and Time: September 29, 2015
8:30 a.m.

Location: City of Kerman Council Chambers
850 S. Madera Avenue
Kerman, California 93631

AGENDA

The sole business to be conducted is as follows:

1. Call to order.
2. Public Hearing: Consideration of Interim Urgency Ordinance Extending for an Additional 120 Days A Moratorium On the Establishment Of Businesses Offering Massages
3. Closed Session Pursuant to Government Code Section 54957 Public Employment Appointment – Title: City Manager

Members of the public shall have an opportunity to be heard on these matters.

This notice is given pursuant to CA Government Code Section 54956 and this notice shall also be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public and on the City's website: www.cityofkerman.net

Date: September 18, 2015

Marci Reyes, City Clerk



City of Kerman

"Where Community Comes First"

MAYOR

Stephen B. Hill

MAYOR PRO-TEM

Gary Yep

COUNCIL MEMBER

Rhonda Armstrong

COUNCIL MEMBER

Nathan Fox

COUNCIL MEMBER

Bill Nijjer

DEPARTMENT: CITY ATTORNEY

STAFF REPORT

CITY COUNCIL MEETING

COUNCIL MEETING DATE: SEPTEMBER 29, 2015

To: Mayor and City Council
From: Hilda Cantū Montoy, City Attorney
Subject: Extension of Moratorium Ordinance Temporarily Prohibiting the Establishment of Businesses Offering Massages Pending Study and Adoption of Regulatory and Zoning Standards

RECOMMENDATION

Council adopt as an urgency measure by a four-fifths vote an extension of Ordinance No. 15-2 titled: AN INTERIM URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF KERMAN EXTENDING FOR AN ADDITIONAL 120 DAYS A MORATORIUM ON BUSINESS OFFERING MESSAGES PENDING STUDY AND ADOPTION OF REGULATORY AND ZONING STANDARDS.

EXECUTIVE SUMMARY

The temporary 45-day moratorium which became effective on August 19, 2015, is set to expire on October 3, 2015. The City Council is asked to extend the moratorium an additional 120 days. An extension is necessary because staff studies and proposed regulations are incomplete and ongoing. Absence of this Ordinance would create a serious threat to the orderly and effective implementation of any revisions to the City's Municipal Code.

DISCUSSION

As noted above the 45-day moratorium is set to expire on October 3, 2015. Drafting of a regulatory ordinance and amendments to the Zoning Ordinance to require a conditional use permit have been commenced but will not be completed and adopted before the expiration of the 45 days. The land use related ordinance needs to be vetted through the Planning Commission. As required by Government Code Section 65858(d) a written report was issued and is on file with the City Clerk and on the City's website. It is also attached. The report noted that city staff from the Planning Department, the Police Chief, the Interim City Manager, and the City Attorney have been exploring options for the City Council to consider regarding the regulation of massage establishments. Staff activities have involved:

- Gathering data from studies conducted by other entities concerning the secondary effects of massage establishments in those communities
- Studying ordinances from other California cities which regulate such uses
- Researching the implications of AB 1147 on regulation of massage establishments
- Meetings and determinations on regulatory and land use ordinances
- Commencing the drafting of ordinances

PUBLIC HEARING

Consider an Interim Urgency Ordinance Extending for an Additional 120 Days A Moratorium on the Establishment of Businesses Offering Massages

Attachments:

- A. Interim Urgency Ordinance Extending for an Additional 120 Days A Moratorium on the Establishment of Businesses Offering Massages
- B. Written Report Per Government Code 65858

Attachment 'A'

ORDINANCE NO. 15-___

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF KERMAN EXTENDING FOR AN ADDITIONAL
120 DAYS A MORATORIUM ON BUSINESSES OFFERING MESSAGES
PENDING STUDY AND ADOPTION OF REGULATORY AND
ZONING STANDARDS**

The City Council of the City of Kerman does ordain as follows:

Section 1. Findings and Determinations.

A. On August 19, 2015, pursuant to Government Code Sections 36937 and 65858, the City Council adopted interim urgency Ordinance No. 15-02 enacting an initial temporary forty-five (45) day moratorium on the establishment or expansion of massage establishments in the City.

B. Unless an extension of Ordinance No. 15-02 is adopted, the moratorium will terminate on October 3, 2015, and no new moratorium may thereafter be enacted. A copy of Ordinance No 15-02 is attached as Attachment A.

C. Pursuant to Government Code section 65858, the City Council now desires to extend interim urgency Ordinance No 15-02 an additional period of one hundred twenty (120) days to January 31, 2016.

D. On September 29, 2015, the City Council held a duly noticed public hearing in accordance with Government Code section 65858 to consider the adoption of this Ordinance. The City Council has considered all written and oral comments offered.

E. On September 23, 2015, at least ten (10) days prior to the expiration of Ordinance No. 15-02, the City Council caused to be issued on its behalf a written report pursuant to Government Code section 65858(d) describing the measures taken to alleviate the conditions which led to the adoption of the moratorium; the City Council hereby approves the report.

F. After hearing all applicable evidence, the City Council finds that the conditions and findings recited in Ordinance No. 15-02 continue to exist and are incorporated herein by this reference.

G. The City Council further finds studies by City staff are necessary in order to create proper rules, criteria and conditions of approval that are consistent with state law. The City in particular desires to study whether to limit such establishments to certain zoning districts, which districts would be appropriate for such uses, what design, operating conditions and restrictions would advance the public's interest, and the extent to which the City is permitted to regulate such establishments.

H. The City Council directs that all studies be pursued as expeditiously as is practicable. In order to prevent the frustration of said studies and the implementation thereof, the public interest, health, safety, and welfare require the immediate enactment of this Ordinance. The absence of this Ordinance would create a serious threat to the orderly and effective implementation of any massage or zoning amendments in that further development of massage uses may conflict with or frustrate contemplated revisions to the City's municipal code.

I. Experience in many cities throughout California such as Thousand Oaks, Huntington Beach, and San Gabriel demonstrates that massage uses, as currently regulated under state and local law, have objectionable secondary effects upon immediately adjacent residential and commercial areas by impacting crime rates, neighborhood character, quality of life, and the local economy by creating blight and compromising public trust. The City Council finds that this Ordinance is immediately required to preserve the City from these secondary effects created by massage uses during the period of time necessary to complete the studies and revise the municipal code.

J. Without this Ordinance, the City may issue entitlements to establish or expand massage businesses, which is contrary to the City Council's goal enacting this moratorium in the first instance to ensure full protection of the public health, safety, and welfare.

K. The City Council finds that this is a matter of City-wide importance and is not directed toward any particular parcel of property or proposed use.

L. The City Council further finds, determines, and declares that there is a current and immediate threat to the public health, safety, and welfare necessitating the immediate enactment of this Ordinance. The facts constituting such urgency are set forth in Sections A-K, inclusive, of this Ordinance.

Section 2. Extension of Moratorium.

The City Council hereby orders that Ordinance No. 15-02 be extended for an additional term of one hundred twenty (120) days, subject to all the terms and provisions contained herein, unless otherwise superseded or rescinded by the City Council or extended pursuant to Government Code section 65858. During the extension period, the issuance of any new entitlement to establish a massage business or expand or relocate an existing one is prohibited.

Section 3. Environmental Review.

The City Council on the basis of the whole record and exercising independent judgment finds that this urgency ordinance is not subject to environmental review pursuant to the State Guidelines for Implementation of the California Environmental Quality Act sections 15060(c)(2) and 15060(c)(3) pertaining to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378. This Ordinance has no potential for resulting in physical change to the environment directly or indirectly in that it prevents change to the environment pending the completion of the contemplated research and studies.

Section 4. Severability.

If any provision of this Interim Urgency Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Interim Urgency Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Interim Urgency Ordinance are hereby declared to be severable.

Section 5. Effective Date and Duration.

This Ordinance is an urgency Ordinance under Government Code section 65858 and as such, it shall be introduced, passed, and adopted at one and the same meeting.

This Ordinance is effective immediately upon adoption by a four-fifths vote of the City Council and extends the initial forty-five (45) day moratorium enacted under Ordinance No. 15-02 for a period of one hundred twenty (120) days from the date of the expiration thereof to January 31, 2016. The reasons for this urgency are declared and set forth in Sections 1-5, inclusive, of this Ordinance and the same are incorporated by reference herein.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Kerman this 29th day of September 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing ordinance is hereby approved.

Stephen B. Hill
Mayor

ATTEST:

Marci Reyes
City Clerk

Attachment 'B'

**City of Kerman
City Council
Interoffice Memorandum**

DATE: September 23, 2015

TO: Mayor Hill and City Council Members

FROM: Olivia Pimentel, Planning Technician;
Joseph Blohm, Police Chief

SUBJECT: WRITTEN REPORT PURSUANT TO GOVERNMENT CODE SECTION 65858 REGARDING MEASURES TAKEN TO ALLEVIATE CONDITIONS RESULTING IN THE ADOPTION OF AN URGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF BUSINESSES OFFERING MASSAGES.

On August 19, 2015, the City Council adopted an urgency ordinance imposing a temporary moratorium on the establishment of businesses offering massages pending study and adoption of regulatory and zoning standards (Ordinance No. 15-02) within the City of Kerman. The ordinance was necessary to protect the public health, safety, and welfare during the time that City staff analyzes and studies options and recommendations on whether or not to restrict such uses in certain areas and/or zones within the City limits and whether or not to impose a regulatory permit.

Since then, City staff has begun the following measures to alleviate the conditions that led to the adoption of the interim ordinance, which are ongoing:

- Gathering data from studies conducted by other entities concerning the secondary effects of massage establishments in those communities;
- Studying ordinances from other California cities which regulate such uses;
- Researching the implications of AB 1147 on regulation of massage establishments; and
- Meetings and determinations on regulatory and land use ordinances.

City staff anticipates adding the following measure during the remaining period of the moratorium:

- Prepare recommendations and related ordinances, staff reports and other documentation, as necessary, for consideration by the Planning Commission and the City Council.

The process is being expedited and may be completed in less than ninety (90) days but would take the full amount of the one hundred twenty (120) day ordinance extension.