

**REPORT TO COUNCIL MAYOR AND COUNCIL****TO HONORABLE MAYOR AND COUNCIL:**

DATE: July 6, 2009

SUBJECT: PROPOSED CHANGES TO CONCORD MUNICIPAL CODE TO EXEMPT LICENSED MASSAGE PRACTITIONERS AND THERAPISTS FROM CITY PERMIT REQUIREMENT TO THE EXTENT REQUIRED BY RECENT STATE LEGISLATION**Report in Brief**

In order for any individual to “engage in, conduct or carry on, or permit to be engaged in, conducted or carried on” massage services within the City of Concord, the Concord Municipal Code presently requires that the interested individual apply for a massage permit at the Police Department. A new state law passed in December 2008, however, has partially preempted the authority of cities to regulate these activities. The proposed revision to the Concord Municipal Code acknowledges the limitations imposed by the new state law, while retaining the full measure of the City’s authority in those circumstances not governed by the new statute.

Background

Massage therapy has long been recognized for its myriad health benefits. Qualified massage technicians can provide therapeutic services that relieve or alleviate pain, decrease fatigue, and improve a customer’s sense of well-being. The City of Concord is host to a number of massage establishments that operate within legal bounds and contribute to the quality of life in the City.

Unfortunately, massage services have also frequently been used as a cover for illegitimate business offerings, most notably prostitution and human trafficking. According to the U.S. State Department’s Office to Monitor and Combat Trafficking in Persons, “Sex trafficking comprises a significant portion of overall trafficking and the majority of transnational modern-day slavery. Sex trafficking would not exist without the demand for commercial sex flourishing around the world. ... Turning people into dehumanized commodities creates an enabling environment for human trafficking.” (U.S. State Department’s Office to Monitor and Combat Trafficking in Persons, 2008 Report, p. 23, dated June 4, 2008.)

The City of Concord has addressed the improper usage of massage establishments by regulating the operation of these establishments within its borders. (See Concord Municipal Code §§ 18-271 through 18-300, the “Massage Therapy Ordinance.”) In accordance with the authority vested in local governments by the State constitution, as well as statutory law, Concord has developed a massage permitting process whereby massage operators are required to take and pass an examination developed to test applicants’ knowledge of

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massage principles, submit to fingerprinting and a background check, provide proof of a negative tuberculosis test, and comply with a host of other, similar requirements. The collective purpose of the Massage Therapy Ordinance is to ensure that massage purveyors operating within the City are legitimate business concerns staffed by qualified individuals.

Concord is not alone in the Bay Area in terms of municipal regulation of massage purveyors. In fact, most cities in the Bay Area regulate massage services in some manner. This has created a patchwork of governmental regulation that, according to some massage providers, has made it both difficult and expensive to practice their trade. In addition, the municipal regulations adopted in many cities have left a number of professional massage therapists feeling persecuted as suspect providers of illicit services. As a result, many such providers have sought the implementation of a statewide regulatory system to replace the city-level oversight. In 2008, they were successful in obtaining the enactment of Senate Bill 731.

Under SB 731, a voluntary framework has been established, whereby a newly created Massage Therapy Organization (“MTO”) will be created to issue practitioner and therapist certificates to massage providers. The MTO will be a new non-profit council with legislative oversight and will include massage industry representatives, among others. Local governments will be prohibited from requiring that certified massage providers obtain a license or permit and cannot require certificate holders to comply with local ordinances related to education, fitness to perform massage, or background checks. According to a press release issued by the Associated Bodywork and Massage Professionals organization, 83% of its membership supported the bill, which suggests that a large number of California’s estimated 40,000 massage practitioners will seek MTO certification, effectively removing those practitioners from city-level regulation.

Discussion

While local governments are still authorized to regulate massage providers vis-à-vis the enforcement of ordinances governing zoning and reasonable health and safety requirements, SB 731 has otherwise rendered Concord’s existing Massage Therapist Ordinance inapplicable with respect to anyone who successfully seeks an MTO certificate. However, there will still be those practitioners who, for whatever reason, choose not to seek such certification or are unsuccessful in seeking certification. SB 731 does not affect local governments’ ability to regulate any individual offering massage services in the absence of an MTO certificate.

Given that there may still be a number of massage providers who seek to practice within the City without an MTO certificate, staff believes that the wisest course is to maintain the existing Massage Therapist Ordinance and simply add an exemption for individuals certified by the MTO. Ordinance No. 09-3 thus brings the Concord Municipal Code into compliance with state law, as amended by SB 731, and retains as much regulatory power over massage purveyors as is currently possible.

Staff notes that other cities have simply opted to replace their existing permitting structures with a requirement that any and all massage purveyors operating within their city limits be certified by the MTO. After much consideration, staff believes that the course outlined above will better serve the City, for at least two reasons. First, as previously mentioned, certification through the MTO is voluntary, and there may be

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providers who opt not to seek a certificate. The MTO has yet to be formed, and it is still unclear what sort of fees will be charged for certification. It may be the case that permitting through the City remains cheaper than certification through the MTO, so local providers may opt for that route, in which case, we would want to retain as much of our existing regulatory framework as possible. Second, the MTO will not begin issuing certificates until at least September of this year, and until then, we remain empowered to regulate this industry under current ordinance provisions.

Fiscal Impact

None.

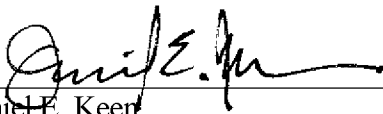
Public Contact

None.

Staff Recommendation

Staff recommends the City Council introduce Ordinance No. 09-3 by reading of the title only and waiving further reading thereof.

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Attachment 1: Proposed Ordinance No. 09-3

ORDINANCE NO. 09-3

**AN ORDINANCE AMENDING CONCORD MUNICIPAL CODE
CHAPTER 18 (BUSINESSES AND BUSINESS REGULATIONS), ARTICLE IX
(MESSAGE ESTABLISHMENTS, OUT-CALL MESSAGE THERAPY, AND
MESSAGE THERAPY TECHNICIANS), SECTION 18-274 (PERMIT
EXEMPTIONS)**

THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:

Section 1. Concord Municipal Code Chapter 18 (Businesses and Business Regulations), Article IX (Massage Establishments, Out-Call Massage Therapy, and Massage Therapy Technicians), Section 18-274 (Permit exemptions) is hereby amended by adding new subsection (6) to read as follows:

(6) Massage therapists, bodyworkers, bodywork therapists or massage, and bodywork therapists operating under a valid license issued by the Massage Therapist Organization (also known as the California Massage Therapy Council), per Chapter 10.5 (commencing with Section 4600) of Division 2 of the California Business & Professions Code relating to massage therapy, provided however, that such persons shall not be exempted from this Article if Chapter 10.5 is repealed.

Section 2. This Ordinance No. 09-3 shall become effective thirty (30) days following its passage and adoption. In the event a summary of said Ordinance is published in lieu of the entire Ordinance, a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to its adoption and within fifteen (15) days after its adoption, including the vote of the Councilmembers. Additionally, a summary prepared by the City Attorney’s Office shall be published once at least five (5) days prior to the date of adoption of this Ordinance

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1 and once within fifteen (15) days after its passage and adoption, including the vote of the
2 Councilmembers, in the Contra Costa Times, a newspaper of general circulation in the City of
3 Concord.

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5 _____
6 Laura Hoffmeister
7 Mayor

8 ATTEST:

9 _____
10 Mary Rae Lehman, CMC
11 City Clerk

12 (Seal)

13
14 Ordinance No. 09-3 was duly and regularly introduced at a regular joint meeting of the City
15 Council and Redevelopment Agency held on July 6, 2009, and was thereafter duly and regularly
16 passed and adopted at a regular joint meeting of the City Council and Redevelopment Agency held on
17 July 27, 2009, by the following vote:

18 **AYES:** Councilmembers -

19 **NOES:** Councilmembers -

20 **ABSTAIN:** Councilmembers -

21 **ABSENT:** Councilmembers -

22 **I HEREBY CERTIFY** that the foregoing is a true and correct copy of an ordinance duly and
23 regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

24
25 _____
26 Mary Rae Lehman, CMC
27 City Clerk