

ORDINANCE NO. 756-U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDUSTRY, CALIFORNIA, ESTABLISHING A MORATORIUM ON THE ISSUANCE OF ANY NEW PERMIT, LICENSE, APPROVAL, OR ENTITLEMENT PERTAINING TO NEW MESSAGE ESTABLISHMENTS AND MESSAGE TECHNICIANS.

THE CITY COUNCIL OF THE CITY OF INDUSTRY ORDAINS AS FOLLOWS:

SECTION 1. Findings.

- A. Effective September 1, 2009, the City's authority to regulate massage establishments and massage technicians has been partially pre-empted by SB 731 (Business & Professions Code section 4600 and following).
- B. Among other things, SB 731 establishes a Massage Therapy Organization ("MTO") that is authorized to issue certificates for massage technicians (referred to as "massage therapists"). The holder of such a certificate is not subject to any local qualification requirements, however, a local agency may require a business license and information relevant to an individual's certification by the MTO. However, because the MTO certification is voluntary, there is no assurance that existing or new massage service providers will actually obtain such certification and SB 731 only applies to state certified practitioners.
- C. SB 731 also pre-empts the application of certain land use, zoning and operational regulations on massage establishments if a business employs only persons certified by the MTO.
- D. Under its general police powers (Cal. Const. art. 11, § 7) and Government Code sections 51030 - 51034, the City is authorized to and currently does under Municipal Code Chapter 5.20 regulate the qualifications and licensing of massage establishments and massage technicians and also imposes certain operational requirements on such businesses and individuals in order to protect the public health, safety, and welfare.
- E. As a result of this change in law, it is urgent that the City undertake a review of its current massage regulations in order to determine how such regulations may need to be revised in order to be consistent with SB 731 while still providing comprehensive regulations for the establishment, use and operation of businesses offering massage services in the City, so that the public health, safety and welfare remains protected.
- F. There is a significant risk of injury to massage clients by improperly trained or educated massage technicians and the City has a legitimate interest in providing

reasonable safeguards against injury and economic loss to such massage clients.

- G. Massage establishments are businesses that involve intimate contact between persons which creates opportunities for acts of prostitution and other unlawful sexual activity to occur.
- H. The establishment of reasonable standards for the issuance of massage establishment and massage technician licenses and permits and regulations on the operation of massage establishments would serve to reduce the risk of illegal and potential injurious activity.
- I. Government Code sections 36937 and 65858 authorize the adoption of an urgency ordinance to protect the public health, safety and welfare and to prohibit certain land uses that may conflict with land use regulations that the City's legislative bodies are considering or intend to study within a reasonable time.
- J. The City Council finds that there is a current and immediate threat to the public health, safety, and welfare based on the above findings, and upon that basis has determined that an urgency ordinance prohibiting the issuance of new massage establishment and massage technician permits is warranted.

SECTION 2. Moratorium on New Massage Establishments and Massage Technicians. The City Council orders as follows:

A. Except as provided in Subsection B below, for a period of 45 days from the date of adoption of this ordinance, no permits, licenses, approvals, or entitlements may be issued for new massage establishments or new massage technicians as such terms are defined in Industry Municipal Code Chapter 5.20. In addition, no existing massage establishment may be expanded, whether by means of additional space, construction of new facility, or by reconfiguration.

B. The moratorium in Subsection A does not apply to the renewal of any existing massage technician permit issued under Chapter 5.20. In addition, a massage technician permit may be issued to a qualified employee or independent contractor under Chapter 5.20 who will be employed at any currently licensed massage establishment to replace a permitted massage technician who has left the employ of the licensed establishment subject to reasonable proof of the termination or departure of such permitted massage technician.

SECTION 3. Legal, Operational and Planning Study. The Planning Department and the City Attorney's Office are directed to study and analyze issues related to the establishment, permitting, and operation of massage establishments within the City, and the potential impacts of such facilities on public health, safety and welfare of the community, the desirability of such facilities in various zones, and the extent of regulatory controls, if any, to impose on such facilities.

SECTION 4. Environmental Review. The City Council finds that this 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; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date and Duration. This ordinance is an urgency ordinance enacted under California Government Code section 65858(a). This urgency ordinance is effective upon adoption and will extend for a period of 45 days from the date of adoption at which time it will automatically expire unless extended by the City Council in accordance with California Government Code section 65858.

SECTION 7. Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED this 8th day of October, 2009.



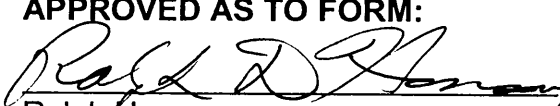
David Perez, Mayor

ATTEST:



Jodi L. Scrivens
City Clerk

APPROVED AS TO FORM:



Ralph Hanson
Deputy City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF INDUSTRY)

DEPUTY CITY CLERK'S CERTIFICATION
RE: ADOPTION CITY OF ORDINANCE

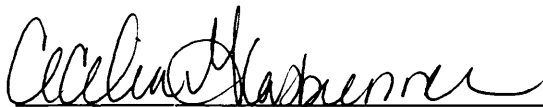
I, Cecelia Glasbrenner, Deputy City Clerk of the City of Industry, do hereby certify that the foregoing Ordinance No. 756-U was introduced and adopted, as an urgency measure pursuant to California Government Code section 36937 (b), at a regular meeting of the City Council on the 8th day of October, 2009 by the following roll-call vote:

AYES: COUNCIL MEMBERS: Haber, Ferrero, Spohn, MPT/Parriott, M/Perez

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None



Cecelia Glasbrenner, Deputy City Clerk
City of Industry, California

(SEAL)