



Legislation Text

File #: 18-0497, **Version:** 2

Recommendation to declare ordinance amending the Long Beach Municipal Code by amending and restating in its entirety Chapter 5.58; amending Section 21.15.110, Section 21.15.1725, Section 21.32.035, Table 32-1 of Chapter 21.32, Section 21.33.050, Section 21.34.030, and Section 21.35.030; adding Section 21.52.030; and repealing Section 21.51.243, all regarding massage establishments, read and adopted as read. (Citywide)

The Long Beach Municipal Code (LBMC) contains regulations for massage establishments and massage technicians for the protection of public health, safety, and welfare in both Title 5, Regulation of Businesses, Trades, and Professions, and Title 21, Zoning. LBMC Title 5 sets forth licensing and operational standards while LBMC Title 21 sets forth land use and location standards. Changes in State law have triggered the need to update the City's regulation of massage establishments. In 2008, Senate Bill 731 (SB 731) authorized the creation of the Massage Therapy Act (effective through December 31, 2014). Subsequently, Assembly Bill 1147 (AB 1147) was enacted (effective January 1, 2015) to replace and "fix" SB 731.

SB 731 was intended to professionalize the massage industry and create universal, State-wide standards for massage businesses and practitioners. SB 731 prohibited local jurisdictions from imposing land use regulations on massage businesses that were different from those imposed on other professional services, provided operators and practitioners were certified by the California Massage Therapy Council (CAMTC). This stripping of local controls had the unintended consequence of causing the proliferation of unpermitted massage establishments and an increase in prostitution and human trafficking cases in many jurisdictions.

AB 1147 restored local regulatory authority of massage businesses and practitioners by allowing jurisdictions to use their regulatory and land use authority to ensure the best interests of the community are met via the establishment of reasonable regulations on licensing, operations, and business locations. SB 1147 also standardized the certification of massage practitioners through the CAMTC, managed solely by the State, thereby dividing regulatory responsibility between the State and local governments. Assembly Bill 2194 (AB 2194) extended the Massage Therapy Act for an additional four years and clarified a local jurisdiction's right to impose and enforce reasonable and necessary fees and regulations on massage businesses, among other provisions.

The proposed Ordinance responds to provisions of AB 1147 and AB 2194 and is reflective of the gradual erosion of stigmas associated with massage establishments. Massage is now seen as a mainstream practice with recognizable therapeutic benefits. Properly regulated massage uses have evolved into a personal service suitable for location within shopping centers and other commercial areas.

LBMC Title 5 Amendments

Currently, Title 5 of the LBMC contains massage operator and practitioner licensing requirements, facility standards, and inspection criteria. These regulations, contained in LBMC Chapter 5.58, Massage, and last amended in 1998, are proposed to be amended and restated entirely. The proposed amendments to LBMC Title 5 are intended to provide safeguards against personal injury and economic loss due to improperly trained or undereducated massage practitioners and safeguards against prostitution, sex trafficking, and other unlawful sexual activities that have been known to occur in establishments offering massage services. The proposed amendments further seek to maintain consistency with changes in State law.

Specific amendments to LBMC Title 5 include requiring CAMTC certification for all individuals providing massage therapy services. Individuals currently providing massage therapy services under a City permit will have one year from the effective date of this Ordinance to become certified by the State to continue operating in the City. Massage establishment owners who are not certified by the State will undergo background checks to be completed by the Long Beach Police Department. Massage establishments will be required to obtain a Massage Establishment Permit, Business License, Health Permit, and Administrative Use Permit (where massage is the primary use). Businesses who currently offer massage therapy services as an accessory use will have 180 days from the effective date of this Ordinance to apply for, and be issued, the massage establishment permit and license. The massage permit requirements do not apply to hotels over 100 rooms, physicians, chiropractors, barbers, cosmetologists, hospitals, and other specified persons and entities engaged in the performance of their duties and operating in compliance with applicable law.

City officials, and their authorized designees, will have inspection rights for purposes of enforcing massage regulations. Massage establishments will be required to follow facilities and operating requirements, including meeting specified standards to ensure health and cleanliness, a requirement that massage activities take place between 7:00 a.m. and 10:00 p.m., and a prohibition on the use, possession, or sale of adult-oriented merchandise, alcohol, or controlled substances, except where authorized by law and, where applicable, approved by the Development Services Department.

LBMC Title 21 Amendments

On February 15, 2018, the Planning Commission held a public hearing on amendments to Chapters 21.15, 21.32, 21.33, 21.34, 21.35, and 21.52 related to defining and permitting massage establishments (Attachment A - Planning Commission Report). The Planning Commission received a staff presentation, closed the public hearing, deliberated, and found the amendments consistent with the General Plan. The Planning Commission unanimously recommended that the City Council approve the Zoning Code Amendment.

Currently, LBMC Title 21, Zoning, identifies uses where massage services are the primary business conducted on the premises as a massage parlor and classifies them as an Adult Entertainment Business, as defined in Section 21.15.110. Other uses sharing this classification include adult book stores, adult motion picture theaters, cabarets, and sexual encounter centers. Adult Entertainment Business uses are subject to Special Development Standards located in Section 21.45.110. These standards include separation from residential zones, schools, parks, churches, and other Adult Entertainment Businesses; a prohibition along street sections identified by the Long Beach Police Department as problematic (experiencing a high rate of arrests for prostitution, lewd behavior, and disorderly conduct); a restriction on business hours (mandatory ceasing of operations between 12:00 a.m. and 9:00 a.m.); and site security requirements. Massage services are a permitted, by-right accessory use (accessory use being defined in the City of Long Beach as no more than 49 percent floor area occupancy within an establishment) when associated with a primary use hotel over 100 rooms, a physician's or chiropractor's office, health club, beauty salon, nail salon, or similar business. Massage services are prohibited as a home occupation use.

Proposed LBMC Title 21 amendments redefine a business offering massage services as a Massage Establishment (Attachment B - Draft Zoning Code Amendments). The amendments remove primary massage uses from the Adult Entertainment Business classification and reclassify them as personal service uses subject to approval of an Administrative Use Permit (AUP) in all commercial zones and Planned Development District subareas that permit commercial uses. The AUP process allows for public notification of new requests, a decision in a public forum (Zoning Administrator action, subject to Planning Commission appeal), and a case-by-case evaluation of the proposed location and business operations. Additionally, the AUP requirement creates an additional enforcement tool for permitted establishments that are found to be in violation of their conditions of approval. Enforcement actions could include a revocation hearing for those permitted establishments that do not come into compliance for identified violations. Massage services as an accessory use to specific commercial uses, will remain a permitted, by-right approval; and, massage services, as a home occupation, will remain prohibited.

The amendments include the addition of special development standards for primary use Massage Establishments to Chapter 21.52. These conditions include a 750-foot buffer between primary use Massage Establishments, street-facing window coverage restrictions,

and a requirement to post an on-premises notice containing resource information related to human trafficking. When added to the operating and licensing restrictions proposed in LBMC Title 5 and possible, request-specific conditions added through the AUP process, the special development standards for primary use Massage Establishments will prevent an overconcentration of such uses and ensure such uses will have minimal impact on the surrounding community.

This recommendation is consistent with the General Plan, specifically upholding the Land Use Element's emphasis on maintaining and improving the quality of life and the Public Safety Element's emphasis on creating safer physical environments.

Public hearing notices were published in the Long Beach Press-Telegram and distributed on May 25, 2018, and no responses were received as of the date of preparation of this report.

In accordance with the Guidelines for implementation of the California Environmental Quality Act (CEQA), a Negative Declaration (ND 05-17) was prepared for the proposed massage amendments (Attachment C - Negative Declaration). The Negative Declaration was made available for a 30-day public review and comment period that began on December 20, 2017, and ended on January 19, 2018. No comment letters were received.

A resolution directing the Director of Development Services to submit a request to the California Coastal Commission to certify an amendment to the Certified Local Coastal Program has been prepared.

This matter was reviewed by Deputy City Attorney Monica J. Kilaita on May 31, 2018 and by Budget Management Officer Rhutu Amin Gharib on June 1, 2018.

There is no fiscal or local job impact associated with this recommendation.

City Council action is requested on June 19, 2018, to ensure implementation of the amendments occurs expeditiously. Pursuant to Section 21.25.103 of the Zoning Regulations, this request must be presented to the City Council within 60 days of the Planning Commission hearing, which took place on February 15, 2018. However, due to the significant changes made to Title 5, the City required additional time.

Approve recommendation.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 5.58; AMENDING SECTION 21.15.110, SECTION 21.15.1725, SECTION 21.32.035, TABLE 32-1 OF CHAPTER 21.32, SECTION 21.33.050, SECTION 21.34.030, AND SECTION 21.35.030; ADDING SECTION 21.52.030; AND REPEALING SECTION 21.51.243, ALL REGARDING MASSAGE ESTABLISHMENTS.

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APPROVED:

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