



CITY COUNCIL

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

VIA: James DeStefano, City Manager

TITLE: **An Interim Ordinance of the City of Diamond Bar pursuant to Government Code Section 65858 extending Ordinance No. 02(2015) temporarily prohibiting the establishment, expansion or relocation of massage establishments Citywide and declaring the urgency thereof.**

RECOMMENDATION:

Adopt.

FISCAL IMPACT:

None.

BACKGROUND/DISCUSSION:

On January 6, 2015, the City Council adopted Interim Urgency Ordinance No. XX(2015), prohibiting the establishment, expansion or relocation of massage establishments Citywide for a period of 45 days. The interim urgency ordinance was adopted to allow staff to study AB 1147, and draft amendments to the Diamond Bar Municipal Code pertaining to the regulation of massage establishments that are consistent with AB 1147.

To provide staff with additional time to study this matter, and then prepare new permanent regulations and update the zoning ordinance for adoption by the City Council, staff recommends that the City Council extend the Interim Urgency Ordinance for an additional 10 months and 15 days as permitted under Government Code Section 65858.

CONFORMANCE WITH GOVERNMENT CODE SECTION 65858:

California Government Code Section 65858(d) states, "(t)en days prior to the expiration of (an) interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance." Publication of this staff report satisfies this Government Code requirement.

ENVIRONMENTAL REVIEW:

The City has determined that the adoption of the Urgency Ordinance is Categorical Exempt in accordance to the 1970 California Environmental Quality Act (CEQA), Section 15061(b)(3) (No Potential for Causing Significant Effect on the Environment) and 15308 (Actions by Regulatory Agencies for Protection of the Environment). Therefore no further environmental review is required.

NOTICE OF PUBLIC HEARING:

Notice for this hearing was published in the Inland Valley Daily Tribune and San Gabriel Valley Tribune newspapers on January 23, 2015, in a 1/8 page display. Pursuant to Planning and Zoning Law Government Code Section 65091(a)(4), if the number of property owners to whom a public hearing notice would be mailed is greater than 1,000, a local agency may provide notice by placing a display advertisement of at least 1/8 page in one newspaper of general circulation. A copy of the public notice was also posted at the City’s three designated

PREPARED BY:

REVIEWED BY:

Grace S. Lee
Senior Planner

Greg Gubman, AICP
Community Development Director

Attachment:

1. Ordinance No. XX(2015)
2. Ordinance No. 02(2015)

ORDINANCE NO. XX (2015)

AN ORDINANCE OF THE CITY OF DIAMOND BAR EXTENDING ORDINANCE NO. 02(2015) PROHIBITING THE ISSUANCE OF LAND USE PERMITS OR BUSINESS LICENSES FOR ESTABLISHMENT, EXPANSION OR RELOCATION OF MASSAGE ESTABLISHMENTS CITYWIDE IN ACCORDANCE WITH THE PROVISIONS OF GOVERNMENT CODE SECTION 65858.

The City Council of the City of Diamond Bar does hereby ordain as follows:

SECTION 1. Moratorium Extended. Ordinance No. 02 (2015), adopted January 6, 2015, is hereby extended for 10 months and 15 days.

SECTION 2. Purpose and Findings: Urgency. Since the enactment of SB 731 and AB 619, jurisdictions have seen an increase in the number of massage establishments as a whole, as well as an increase in illicit massage establishments which engage in prostitution and human trafficking. Diamond Bar saw its number of massage establishments increase from four to 15. Moreover, the City was compelled to permit at least seven massage establishments to open simply on the basis that the owners and/or massage technicians were CAMTC certified. In light of the enforcement issues encountered in other jurisdictions where the number of massage establishments have dramatically increased, illegal activity may also be occurring in some of Diamond Bar's massage establishments.

In response to the rapid proliferation of massage establishments and the impacts directly associated with them, cities, counties, and elected representatives, law enforcement agencies and the League of California Cities successfully advocated for more carefully crafted legislation. On September 18, 2014, the Governor signed into law AB 1147 (Bonilla), which, upon its effective date of January 1, 2015, restores significant local land use authority over massage establishments by removing SB 731 and AB 619's broad state preemption of local massage ordinances and gives local governments greater authority to enact reasonable regulations to manage massage establishments in the best interests of the individual community, including restoring authority to impose regulations on massage establishments that do not apply to other professional service providers.

The City is currently studying this matter to draft amendments to the Diamond Bar Municipal Code pertaining to the regulation of massage establishments that are consistent with AB 1147 in a manner that protects the health, safety and general welfare of all persons from the negative effects that illicit massage establishments impose on communities. Due to the time required to prepare and adopt these new regulations and update the zoning ordinance, this Ordinance is intended to place an interim prohibition on the establishment, expansion or relocation of massage establishments Citywide as of the date of adoption hereof until new permanent regulations are prepared and adopted by the City Council.

SECTION 3. Land Use Permits and Business Licenses Prohibited. The issuance of land use permits and business licenses for establishment, expansion or relocation of massage establishments Citywide is hereby prohibited. Notwithstanding any

provision of the Diamond Bar Municipal Code to the contrary, no zoning permits or approvals, business licenses for any massage establishments shall be approved or issued Citywide during the pendency of this Ordinance or any extension thereof.

SECTION 4. Penalties. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$1,000 or by imprisonment in County jail for not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

SECTION 5. Severability. If any part or provision of this Ordinance or the application to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of such part of provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

SECTION 6. Conflicting Laws. For the term of this Ordinance, or any extension thereof, the provisions of this Ordinance shall govern over any conflicting provisions of any other City code, ordinance, resolution or policy.

SECTION 7. California Environmental Quality Act Finding. This Urgency Ordinance is not subject to the California Environmental Quality Act (“CEQA”) because this ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061 (b)(3) of the CEQA Guidelines); moreover, this Ordinance is also exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines (Actions by Regulatory Agencies for Protection of the Environment).

PASSED, APPROVED AND ADOPTED this 3rd day of February 3, 2015.

BY: _____
Steve Tye, Mayor

I, Tommye Cribbins, City Clerk of the City of Diamond Bar, do hereby certify that the foregoing Urgency Ordinance was duly introduced, passed, and adopted by the City Council of the City of Diamond Bar, at a regular meeting of the City Council held on the 3rd day of January 2015, by the following vote:

AYES: Council Member:

NOES: Council Member:

ABSTAIN: Council Member:

ABSENT: Council Member:

ATTEST:

Tommye Cribbins, City Clerk
City of Diamond Bar