



Board Agenda Item 7

DATE: February 25, 2020

TO: Board of Supervisors

SUBMITTED BY: Margaret Mims, Sheriff-Coroner-Public Administrator

SUBJECT: Proposed Amendment to the Ordinance Code of Fresno County, Adding Chapter 6.39, "County of Fresno Massage Establishment and Out Call Massage Services Ordinance" to Title 6, "Business Licenses and Regulations"

RECOMMENDED ACTION(S):

- 1. Conduct first hearing to amend the Fresno County Ordinance Code, Title 6, to add Chapter 6.39, "County of Fresno Massage Establishment and Out Call Massage Services Ordinance;" waive reading of the Ordinance in its entirety; and set the second hearing for March 24, 2020;**
- 2. Designate County Counsel to prepare a fair and adequate summary of the proposed Ordinance; and**
- 3. Direct the Clerk of the Board to post and publish the required summary in accordance with Government Code, Section 25124(b)(1).**

The recommended actions add Chapter 6.39, "County of Fresno Massage Establishment and Out Call Massage Services Ordinance" to Title 6, "Business Licenses and Regulations" to the Ordinance Code of Fresno County to properly recognize that lawful commercial massage therapy is a respected professional pursuit that can offer the public valuable health and therapeutic services. However, unless properly regulated, the practice of massage therapy and the operation of massage establishments may be associated with unlawful activity and may pose a threat to the quality of life in the local community. Accordingly, it is the purpose and intent of this chapter to protect the public health, safety, and welfare by providing for orderly regulation of businesses providing massage therapy services, to prevent blighting conditions and discourage prostitution/human trafficking and related illegal activities carried on under the guise of massage therapy, and establish certain sanitation, health and operational standards for massage establishments. California Government Code sections 51030 through 51034 provide that the authority for the legislative body of a county for unincorporated areas may enact an ordinance which provides for the licensing for regulation of the business of massage.

This item came to your Board on January 21, 2020. Your Board directed that this item return today with certain revisions to the version of the ordinance proposed on January 21st, including required outreach to existing massage businesses currently operating in the unincorporated areas of the County, and establishing a grace period for proactive businesses who notify the County they are working on their certification with true enforcement of the proposed ordinance to begin in a year from date of approval. Accordingly, the recommended ordinance includes a grace period. The recommended ordinance also requires that the Sheriff's Office make reasonable efforts at community outreach to legitimate massage establishments currently operating in the unincorporated areas of the County.

However, the Sheriff's Office is recommending a 180-day grace period before enforcement begins against massage establishments currently operating in the unincorporated areas of the County as of the effective

date of the ordinance, as well as a 30-day grace period for massage establishments that move into the unincorporated areas of the County after the effective date of the ordinance. The Sheriff's Office believes that its recommended grace period of 180 days would be sufficient to conduct outreach to local businesses, and for those businesses to bring their operations into compliance with the ordinance's requirements. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board could determine not to approve the recommended actions; however, the Sheriff's Office will not be able to regulate the permitting process and enforcement for massage establishments in the unincorporated areas of the County. In addition, your Board has the option of adjusting the grace period(s) to a different time period before enforcement begins against massage establishments.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The cost of permitting will be calculated at the direct rate for the person reviewing the permit (e.g., Identification Technician, Community Service Officer, Deputy Sheriff, Sergeant, Lieutenant, Captain, Undersheriff) based on the current Master Schedule of Fees (MSF). There is currently only a MSF for Deputy Sheriff III and Community Service Officer. Therefore, the Deputy Sheriff III's MSF rate will be used to calculate the Deputy(s), Sergeant(s), Lieutenant(s), Captain(s) and Undersheriff(s) time and the Sheriff's Office will not be charging for the Identification Technician's time (twenty minutes) to process the live scan until the MSF rate is amended to add an Identification Technician position's rate. MSF rates are estimated to be updated in the Spring of 2020 to make any necessary adjustments to the rates.

Due to the adding of this service after the FY 2019-20 budget was adopted, the estimated revenue associated with this ordinance was not included in the Sheriff-Coroner-Public Administrator budget. Any revenue received from the permitting process will be deposited as departmental revenue. However, due to this being a new service/review, it is difficult to estimate revenue. Sufficient appropriations are included in the FY 2019-20 Adopted Budget for Sheriff's Org 3111 for implementation of Chapter 6.39. If the Board chooses to not approve the recommended action, the Sheriff's Office will base its enforcement on an outdated protocol, and the County of Fresno through the Sheriff's Office will bear the burden of additional costs of permitting massage establishments through a Sheriff's directive vs. an ordinance.

DISCUSSION:

Business and Professions Code section 4600 et. seq., the "Massage Therapy Act," provides that it is the intent of the Legislature that broad control over land use in regulating massage establishments be vested in local governments so that they may manage those establishments in the best interests of the individual community, and that the requirements and practice of the profession of massage therapy remain a matter of statewide concern, regulation, and oversight. This law advised that local governments should give strong consideration to establishing a registration program that grants local governments the ability to either suspend or revoke a registration of massage business for specific violations. Government Code sections 51030 through 51034 further expressly provide authority for the legislative body of a county for unincorporated areas to enact an ordinance which provides for the licensing for regulation of the business of massage.

Accordingly, the Fresno County Sheriff's Office, in coordination with other County departments, developed proposed regulations and a permitting process for massage businesses located in the unincorporated areas of the County. The recommended ordinance will be used in coordination with local municipal jurisdictions who already have a permitting and enforcement process in place (cities of Fresno and Clovis). In administering this ordinance, the Sheriff's Office will coordinate efforts with Public Works (zoning), Public Health (sanitation), and the County Administrative Office (appeals).

The County already has an estimated eight massage establishments operating within the unincorporated areas of the County. Because the cities surrounding the County have ordinances regulating massage establishments already in place, any massage establishments that are not legitimate, or do not want to be regulated, have migrated to the unincorporated areas of the County. This has occurred because the County has been limited in its ability to regulate these businesses without an ordinance in place. By approving this ordinance regulating these massage establishments, the County will be able to efficiently regulate the massage businesses that are legitimate, and administratively fine, and/or impose criminal penalties on individuals who violate the requirements of the ordinance, and which contribute to blight and crime problems in the unincorporated areas of the County.

The recommended ordinance is largely similar to the City of Fresno and the City of Clovis' massage ordinances, and includes the following:

- Requires that a massage establishment premises must conform to all land use and zoning requirements.
- Establishes a permit process, requiring lists of all massage therapists, and each therapist's state certification, and requires background checks of the business owners.
- Establishes an appeal process for permits that have been denied, or that have been revoked.
- Establishes operating requirements for massage establishments, including written lists of services available, display of massage therapist certifications, maintenance of records of services provided, prohibitions on drugs or alcohol at massage establishments, massage conduct requirements, lighting requirements, sanitation requirements, and hour of operation limitations.
- Establishes that investigating officials of the County and the State have the right to inspect massage establishments.
- Establishes regulations for massage therapists performing out call massage services (providing massage services for compensation at a location other than at a permitted massage establishment).
- Establishes a permit suspension and revocation process.
- Establishes criminal and administrative penalties for violations of the ordinance.
- Establishes a grace period of one hundred eighty (180) days following the effective date for existing massage establishments currently operating in the unincorporated areas of the County as of the effective date of the recommended ordinance.
- Establishes a grace period of thirty (30) days for new massage establishments that move into the unincorporated areas of the County after the effective date of the recommended ordinance.
- Requires that the Sheriff's Office make reasonable efforts at community outreach to legitimate massage establishments currently operating in the unincorporated areas of the County.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Amended Ordinance
Amended Ordinance - Red Lined
On file with Clerk - Ordinance Summary

CAO ANALYST:

Jeannie Z. Figueroa