



Board Agenda Item 20

DATE: March 24, 2020

TO: Board of Supervisors

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

SUBJECT: Adoption of 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):

Conduct second hearing and adopt an Ordinance amending the Fresno County Ordinance Code, Title 6, to add Chapter 6.39, "County of Fresno Massage Establishment and Out Call Massage Services Ordinance."

The recommended action adds 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 recommended ordinance 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 licensing for regulation of the business of massage. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board could determine not to approve the recommended action; 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 will be limited.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action. 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.

DISCUSSION:

On February 25, 2020, your Board conducted the first hearing to amend Ordinance Code, Title 6, to add Chapter 6.39, County of Fresno Massage Establishment and Out Call Massage Services Ordinance to properly recognize that lawful commercial massage therapy is a respected professional pursuit that can offer the public valuable health and therapeutic services. Your Board also approved the ordinance to include community outreach to legitimate massage establishments currently operating in the unincorporated areas of the County, a 180 day grace period before enforcement begins against massage establishments currently operating in the unincorporated areas of the County as the effective date of the ordinance, and a 30-day grace period for massage establishments that move into the unincorporated areas of the County after the effective date of the ordinance.

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 and 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 into 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 ten 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 adopting 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 and 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.

REFERENCE MATERIAL:

BAI #7, February 25, 2020

ATTACHMENTS INCLUDED AND/OR ON FILE:

Amended Ordinance

CAO ANALYST:

Jeannie Z. Figueroa