



MEETING DATE: 01-20-09

ITEM NO:

3

COUNCIL AGENDA REPORT

DATE: JANUARY 13, 2009

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

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SUBJECT: ACCEPT STAFF REPORT ON EVALUATION OF TOWN CODE ORDINANCE 2155 AND REGULATORY PERMIT PROCESS REGARDING THE REGULATION OF MASSAGE THERAPY ESTABLISHMENTS AND MASSAGE THERAPY PRACTITIONERS

RECOMMENDATION:

Accept staff report on the evaluation of Town Code Ordinance 2155 and regulatory permit process regarding the regulation of massage therapy establishments and massage therapy practitioners.

BACKGROUND:

On November 4, 2007, the Town Council adopted an ordinance regarding the regulation of massage therapy establishments and massage therapy practitioners in the Town of Los Gatos. The ordinance became effective on December 30, 2007. On June 16, 2008, staff brought forward to council a framework for evaluating the implementation of the ordinance. This report presents findings of the evaluation process conducted by the Town Manager's Office.

DISCUSSION:

The purpose of the evaluation process was two-fold: 1) to evaluate the effectiveness of the ordinance in achieving the goals of the ordinance, and 2) to evaluate the regulatory permit process from the participants' perspectives, including both customers and internal staff.

With regard to evaluating the effectiveness of the ordinance in achieving the goals of the ordinance, staff collected and evaluated data related to the following goals:

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PREPARED BY: PAMELA S. JACOBS ASSISTANT TOWN MANAGER

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Reviewed by: _____ Assistant Town Manager Town Attorney
Clerk Administrator _____ Finance _____ Community Development

MAYOR AND TOWN COUNCIL

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JANUARY 13, 2009

- To ensure that massage establishments and practitioners obtain a permit pursuant to Ordinance 2155 to operate in Los Gatos;
- To ensure that persons offering massage possess minimum qualifications;
- To ensure that persons offering massage conduct their work in a lawful and professional manner;
- To provide the Police Department access to information to help control any illegal activities in massage establishments.

Evaluation Process

The evaluation process included both quantitative and qualitative assessments. Quantitative data as of January 8, 2009 collected for the evaluation is as follows:

- Number of massage permits granted – **113 (4 in process)**
- Number of business licenses issued to massage practitioners - **107**
- Number of known massage establishments and massage practitioners in Town of Los Gatos – **117 practitioners in 40 massage establishments**
- Number of permitted massage practitioners meeting the educational requirements; number of permitted practitioners pending completion of educational requirements - **99 meet requirements, 14 do not**
- Number of and reasons for denials of massage permits – **2 due to criminal history of applicant**
- Number, nature and outcomes of appeal hearings – **2, both overturned by Town Manager; applicants were granted massage permit**
- Number, nature and outcomes of violations of the massage ordinance - **0**

The Town Manager's Office distributed approximately 120 surveys, via mail and hand delivery, to collect qualitative information about the permit process. Staff received 35 surveys in return, representing a 29% response rate. The survey asked applicants to rate the following statements on a scale from one to five, (1 strongly disagree, 3 neutral and 5 strongly agree):

1. The clerical portion of the process was expedient;
2. The process was presented in a clear manner;;
3. Representatives from the Town were helpful;
4. The ordinance was not detrimental to my business.

The survey also provided an opportunity for comments, and included the following questions about Senate Bill 731, new legislation providing for state certification of massage therapists:

5. Are you aware of Senate Bill 731?
6. Do you plan to be licensed by the state?
7. Do you believe you'll be licensed by the end of 2009?

PAGE 3

MAYOR AND TOWN COUNCIL

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JANUARY 13, 2009

Evaluation Results and Action

Questions 1 through 4 received average ratings of 3.4, 3.5, 3.4 and 3.2 respectively from the 35 therapists responding to the survey. These averages indicate an overall response of slightly better than a neutral opinion for all the questions. In all cases, responses ranged from 1 to 5 for each question, however, indicating that some therapists felt very positively about the process and some felt very negatively. The additional comments provided by the respondents also ranged from positive to negative, and addressed issues including frustration with the Town's business license requirements, concern with the need for fingerprinting, and both frustration and compliments regarding staff and the process in general.

Staff's observations and survey results indicate several areas to address regarding massage therapist regulation. The first regards the permitting process itself. Over the last six months, staff has worked to resolve internal process issues related to the implementation of this ordinance, including business license questions and concerns. There is now more internal communication between the Police Department and Finance Department; the process has been standardized; checklists are provided to applicants; and a central point of contact has been identified in both the Police and Finance Departments to assist practitioners. Staff expects that therapists going through the process later in the year would have had a more positive experience than those applying soon after the ordinance went into effect. Staff will continue to respond to feedback from customers if additional process improvements are implicated.

Secondly, based on issues raised over the past year with regard to business license requirements for massage therapists, which were echoed in some of the survey responses, staff plans on reviewing the Town's business license ordinance to identify any modifications that staff may recommend for Council consideration. In addition, staff has identified several places in the ordinance needing clarification. However, because the clarification issues have not to date impeded the process or caused undue hardship on the practitioners, staff is recommending waiting on any further change to the ordinance, particularly given the recent passage of Senate Bill 731 which may affect the Town's regulation of massage therapists.

Senate Bill 731

The governor signed SB 731 (Oropeza) into law on September 27, 2008. This law, commencing on September 1, 2009 provides for the certification of massage practitioners and massage therapists by the Massage Therapy Organization (MTO), which would be a nonprofit organization meeting specified requirements. This law requires applicants over the age of 18 to meet educational criteria, provide certain information, submit fingerprints for a background check, and pay fees. The organization will be able to take disciplinary action against certificate holders for specified crimes.

The law also prohibits any city or county from enacting certain ordinances regulating the practice of massage by a certificate holder. This certification process is **voluntary**. The applicable law is found in

PAGE 4

MAYOR AND TOWN COUNCIL

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JANUARY 13, 2009

Business and Professions Code Section 4600-4620. It should be noted that Section 4613 (a) states, "Nothing in this chapter shall restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance governing any person who is not certified pursuant to this chapter."

It is staff's recommendation that until all practicing massage therapists in the Town of Los Gatos obtain the state certificate, the Town continue to regulate massage therapists without state certification and collect fees from them. In addition, the Town should continue to collect business license taxes (subject to any modifications approved by Council in the future), conduct reasonable inspections of massage establishments during business hours, cite an individual for practicing without state certification or a permit under the Town ordinance, and close a business that allows uncertified therapists to practice massage.

In addition, staff will monitor the progress of the implementation of SB 731 and provide an update to council in October of 2009 regarding the transition of permitted massage therapists to state certification.

ENVIRONMENTAL ASSESSMENT:

Is not a project defined under CEQA, and no further action is required.

FISCAL IMPACT:

Costs for continuing to implement Town Code Ordinance 2155 are incorporated in the operating budgets for the Police Department and Finance Department.