

City of Brisbane

Agenda Report

DATE: City Council Meeting of June 16, 2015

TO: Mayor and City Council

FROM: Michael H. Roush, City Attorney

SUBJECT: Resolution of Intention to Amend Zoning Ordinance Concerning Massage Establishments

PURPOSE

To consider adopting a resolution of intention to amend the zoning ordinance such that massage establishments would need a conditional use permit in order to operate in commercial zoning districts

RECOMMENDATION

Adopt the attached resolution of intention to amend the zoning ordinance as described above.

BACKGROUND

In 2014, the City Council adopted comprehensive new operational regulations concerning massage establishments, Chapter 8.10 of the Brisbane Municipal Code. Significantly, the regulations were not land use regulations in that, at the time, the State had purported to preempt most of the local land use regulations applicable to massage establishments. After the ordinance was adopted, however, the state law was changed under AB 1147 that restored local land use authority concerning massage establishments. Accordingly, cities may now impose land use regulations, such as conditional use permits, on massage businesses that are different than those imposed on other professional or personal services.

Under the City's current zoning ordinance, massage establishments are permitted uses (as a personal service) in a number of commercial zoning districts such as the Crocker Park, Sierra Point and Neighborhood Commercial (Brisbane Village and Downtown Brisbane) districts. In the Marsh Lagoon Bayfront and Southwest Bayshore zoning districts, these uses are conditionally allowed.

Because of abuses in other communities where massage establishments have operated as a cover for illegal activities, the Police Department is of the view that massage establishments should be conditionally permitted uses in all commercial zoning districts.

DISCUSSION

Section 17.50.010 of the Municipal Code provides that the process to initiate an amendment to the zoning ordinance by which a new regulation is imposed on property is by filing of a resolution of intention by the City Council. Requiring property owners within commercial zoning districts to obtain a conditional use permit in order to operate a massage establishment would impose new regulations on such property.

Accordingly, if the City Council wishes to consider adopting such regulations, attached is a resolution of intention initiating such revisions to the zoning ordinance. Those revisions would first be considered by the Planning Commission who would make a recommendation to the City Council. If those regulations were adopted, they would require new massage establishments in all commercial zoning districts to obtain a conditional use permit.

These changes, if adopted, would not, however, affect a certified massage therapist who is a sole owner, operator or employee of a business operating as a sole proprietorship operating at a fixed place of business where the place of business is a personal residence or who does not have a fixed place of business but provides "outcall massage services" at a customer's or client's location. That therapist would still need to comply with all of the regulatory requirements but would not, for example, need a conditional use permit for the therapist's personal residence. To the extent, however, a therapist does provide massage at his or her own residence, the therapist would need to obtain a home occupation permit and comply with the regulations applicable to such permit. If the business were limited to "outcall massage services" the therapist still must meet the regulatory requirements but no home occupation permit would be required and no massage services could be provided at the therapist's residence.

It should be pointed out that AB 1147 also made a number of changes to the operational requirements for massage establishments. As a result, San Mateo County drafted a model ordinance that reflects those changes. Staff has reviewed the model ordinance and compared it to the ordinance that the City Council adopted in 2014. The model ordinance is slightly more restrictive in some respects, for example, the hours of operation are somewhat more restrictive but, overall, the differences are not significant. Accordingly, given the comprehensive review Council undertook on this matter last year, it is not the best use of City resources at this time to fine tune the City ordinance to conform its operational regulations entirely to the regulations in the model.

FISCAL IMPACT

There is no fiscal impact in adopting the resolution of intention. If the zoning ordinance amendments are adopted, there will be some additional staff and planning commission time to process and consider use permits for massage establishments.



Michael Roush, City Attorney



Clayton Holstine, City Manager

RESOLUTION NO. 2015-34

A RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE TO INITIATE AN AMENDMENT TO THE ZONING ORDINANCE OF THE CITY OF BRISBANE TO REQUIRE MASSAGE ESTABLISHMENTS INTENDING TO LOCATE IN A COMMERCIAL ZONING DISTRICT TO OBTAIN A CONDITIONAL USE PERMIT

WHEREAS, Section 17.50.010 of the Brisbane Municipal Code provides in part that the process to initiate an amendment to the Zoning Ordinance whereby a new regulation would be imposed on property is by the filing of a resolution of intention by the City Council; and

WHEREAS, under the City's Zoning Ordinance massage establishments are permitted uses (as a personal service) in certain commercial zoning districts including the Crocker Park, Sierra Point and Neighborhood (Brisbane Village and Downtown Brisbane) districts; and

WHEREAS, in other communities certain massage establishments have operated as a cover for illegal activities; and

WHEREAS, by requiring massage establishments in commercial zoning districts to obtain conditional use permits before operating, the City would have stronger land use controls over such uses.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE AS FOLLOWS:

1. The City Council files this Resolution of Intention to initiate the process by which the City's Zoning Ordinance may be amended by requiring conditional use permits for all massage establishments in commercial zoning districts.
2. This Resolution of Intention is referred to City staff to prepare and present to the Planning Commission for its consideration and recommendation to the City Council a report and proposed amendments to the Zoning Ordinance as described herein.
3. This resolution of intention is effective immediately upon its adoption.

Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution No. 2015-34 was duly and regularly adopted at the regular meeting of the Brisbane City Council on July 16, 2015 by the following vote:

AYES:

NOES:

ABSENT:

Sheri Marie Spediacci, City Clerk