

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: May 15, 2014

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee

FROM: Gerry F. Miller *M. F. Miller for* Council File: 14-0002-S32
Chief Legislative Analyst Assignment No.: 14-03-0213

SUBJECT: Resolution (Parks – O’Farrell) to support sunset provision of SB 731 and oppose legislation which would continue to undermine local regulation of massage businesses

CLA RECOMMENDATION: Adopt the attached amended Resolution to include in the City’s 2013-2014 State Legislative Program SUPPORT of AB 1147 (Bonilla), which would remove restrictions on local land use authority and enact additional reforms, enabling local governments to more effectively zone and regulate massage establishments.

SUMMARY

On March 21, 2014, a Resolution (Parks – O’Farrell) was introduced in support of allowing the sunset provision of SB 731, which was enacted in 2008, to take effect while concurrently opposing legislation which would continue undermining local control and regulation of massage establishments. The Resolution notes that enactment of SB 731 created the California Massage Therapy Council (CAMTC) to oversee a voluntary certification process for massage therapists. In doing so, SB 731 removed the ability of local governments to regulate and control massage businesses according to preexisting local ordinances which governed land use and permitting requirements. In addition, the licensure of massage therapists applies only to the holder of the license, so if a certificate holder is an employee of a business and engages in illegal activity, the employee is subject to disciplinary action but the employer is not. These circumstances have negatively impacted local governments based on the lack of local control and local law enforcement’s increasing difficulty to investigate and enforce crimes of prostitution. With SB 731 due to sunset on January 1, 2015, the Resolution seeks an official City position to support the sunset provision and oppose any legislation which would continue undermining local control.

BACKGROUND

The original intent of SB 731 (Oropeza) (Chapter 384, Statutes of 2008) was to create uniform standards regarding education, training and background investigation for massage practitioners to help professionalize the massage industry in California. SB 731 established CAMTC as a non-profit organization responsible for the voluntary certification of message practitioners and massage therapists. Since certification is voluntary under SB 731, non-certified individuals may provide massage services in accordance with local rules and regulations, while establishments with certified professionals are exempted from certain local land use controls, such as needing to obtain a permit or license to practice massage. CAMTC was initially known as the Message Therapy Organization until 2011 when AB 619 (Halderman) renamed it to CAMTC.

Impacts to Local Jurisdictions and Los Angeles

The provisions contained in SB 731 effectively removed the ability of local governments to regulate massage establishments according to land use and other local considerations, including the preemption of existing local ordinances applying to massage establishments. A current provision within SB 731 states: *“Nothing in this section shall prohibit a city, county, or city and county from adopting land use and zoning requirements applicable to massage establishments or businesses, provided that these requirements shall be no different than the requirements that are uniformly applied to other professional or personal services businesses.”* Many California cities, including Los Angeles, have been impacted by this provision. Cities have seen a significant increase in the number of massage establishments in their jurisdictions, with some areas having very high concentrations, which may not be consistent with local zoning plans.

In addition, local law enforcement agencies have encountered difficulties enforcing laws against illicit activities, such as prostitution, occurring at massage establishments. Under SB 731, the licensure of massage therapists only applies to the holder of the license, so if a certificate holder is an employee of a business and engages in illegal activity, the employee is subject to disciplinary action but the employer is not. In addition, as a voluntary registration program, CAMTC is only responsible for certified employees and owners who have chosen to register.

Regarding whether these circumstances are consistent with the intent of SB 731, an analysis prepared for the sunset review hearing conducted by the Joint Senate-Assembly Oversight Committee in March 2014, states: *“Based on a review of the legislative history of SB 731, it does not appear that the intent of the preemption clause was to dismantle a local jurisdiction’s ability to regulate massage businesses, as it would any other business.”*

In discussions with the Los Angeles Police Department and City Attorney’s Office, the provisions of SB 731 have negatively impacted the City of Los Angeles. The City’s preexisting land use controls and permitting process for massage establishments have been effectively nullified.

Status of AB 1147

Prior versions of AB 1147 in the current legislative session addressed other issues related to massage establishments, such as posting signs for human trafficking awareness and standards for massage practitioner certification. These versions of the bill, however, did not incorporate concerns raised by local governments. On April 23, 2014, subsequent to the introduction of Resolution (Parks – O’Farrell), AB 1147 was amended to incorporate some of the concerns raised by local governments in California.

The City Attorney’s Office reviewed the current version of AB 1147 and indicated that it contains provisions favorable to local governments. These provisions include:

- Changes to the composition of the CAMTC to include 11 total members, with one member appointed from each of the following entities: League of California Cities, California Police Chiefs Association, California State Association of Counties, Senate Committee on Rules, Speaker of the Assembly; and six members appointed by the Governor (amendment to Section 4602(f)-(g) of the Business & Professions Code).

- CAMTC will be authorized to receive arrest notifications and other background materials about applicants and certificate/registration holders from a city/county (amendment to Section 4606 of the Business & Professions Code).
- Return of local land use control back to cities and counties (AB 1147 deletes former language concerning broad “preemption” of local land use authority for State “certified-only professionals”).
- Creates a revocable “massage establishment” state registration (amendment to Sections 4613 & 4610 of the Business & Professions Code).

The City Attorney’s Office indicated one potential issue with the current version of AB 1147 relating to the ability of local law enforcement to conduct reasonable inspections or investigations at massage establishments. AB 1147 states that local laws may not include “*a prohibition against locked doors in a registered massage establishment with two or more people working at the establishment.*”

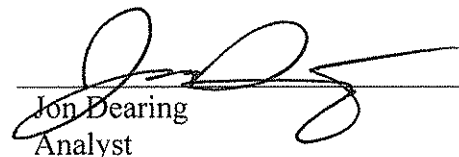
AB 1147 is supported by the League of California Cities, which has spearheaded the effort to modify the current law and coordinate efforts of local governments to highlight the impacts of SB 731 in their jurisdictions.

DEPARTMENTS NOTIFIED

Police Department
 Planning Department
 City Attorney

BILL STATUS

2/22/2013	AB 1147 introduced in State Assembly
6/3/2013	Referred to Assembly Com. on B.P. & C.P.
1/6/2014	Amended to address human trafficking awareness
1/14/2004	Amended to address massage practitioner certification
4/23/2014	Amended to address various local issues
4/23/2014	Re-referred to Assembly Com. on B.P. & C.P.



Jon Dearing
 Analyst

GM:MF:jd

- Attachments: 1. Amended Resolution Supporting AB 1147
 2. Resolution (Parks – O’Farrell)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the massage industry provides a variety of benefits for people in need of pain relief, injury rehabilitation, stress reduction, and general relaxation; and

WHEREAS, certain regulations are also needed to ensure that legitimate massage businesses are not confused with illegitimate establishments which foster illegal activity such as prostitution and human trafficking; and

WHEREAS, in 2008 the State Legislature enacted SB 731 which created the California Massage Therapy Council (CAMTC) to oversee a statewide voluntary certification process for massage therapists; and

WHEREAS, SB 731 removed the ability of local governments to regulate and control massage businesses according to pre-existing local ordinances which governed land use and permitting requirements; and

WHEREAS, the language of SB 731 gives the appearance that local governments may use such ordinances, but this language is misleading because SB 731 states that such ordinances are valid only if regulations applying to massage establishments are the same as all other types of professional services, which is clearly impractical for local jurisdictions; and

WHEREAS, under SB731, the licensure of massage therapists only applies to the holder of the license, so if a certificate holder is an employee of a business and engages in illegal activity, the employee is subject to disciplinary action but the employer is not; and

WHEREAS, the lack of local control and local law enforcement's increasing difficulty to investigate and enforce crimes of prostitution demonstrate that SB 731 has negatively impacted local governments; and

WHEREAS, these concerns are shared by municipalities and law enforcement agencies across California; and

WHEREAS, SB 731 is due to sunset on January 1, 2015, and the State Legislature is considering whether to allow the current legislation to continue or expire; and

WHEREAS, AB 1147 (Bonilla) would remove restrictions on local control and regulation to better enable cities to address the negative circumstances that have resulted from SB 731 thus far;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-2014 State Legislative Program SUPPORT of AB 1147 (Bonilla) which would remove restrictions on local land use authority, and enact additional reforms, enabling local governments to more effectively zone and regulate massage establishments.

14-0002-532

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

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WHEREAS, SB 731 is due to sunset on January 1, 2015, and the State Legislature is considering whether to allow the current legislation to continue or expire;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-2014 State Legislative Program SUPPORT of the sunset provision of SB 731 enacted in 2008, and OPPOSITION to legislation which would continue to undermine local control and regulation of massage businesses.

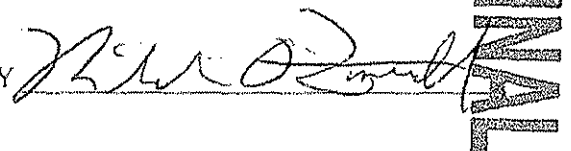


MAR 21 2014

PRESENTED BY

BERNARD C. PARKS
Councilmember, 8th District

SECONDED BY



ORIGINAL