

ATTACHMENT II

ORDINANCE NO. 26-_____

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD PURUSANT TO GOVERNMENT CODE SECTION 65858, EXTENDING A TEMPORARY MORAOTRIUM ON NEW MASSAGE BUSINESSES FOR A PERIOD UP TO 10 MONTHS, 15 DAYS, AND FINDING THAT THE ACTION IS EXEMPT FROM ENVIRONMENTAL REVIEW

WHEREAS, the City of Hayward ("City") is authorized under California Government Code Section 51030 et seq. to regulate a massage business when carried on within the City; and

WHEREAS, massage businesses are regulated pursuant to Hayward Municipal Code Chapter 6, Article 10 (Massage Permit Ordinance) and Chapter 10, Article 1 (Zoning Ordinance); and

WHEREAS, the Hayward Police Department has become aware of instances of commercial sex work taking place at permitted and unpermitted massage businesses within the city, which have resulted in criminal investigations and prosecutions; and

WHEREAS, there are currently 17 permitted massage establishments in the City, with 10 of those establishments having complaints of illicit activity; and

WHEREAS, on October 8, 2025, the Police Chief revoked a massage establishment permit for a business in Downtown Hayward based on evidence of commercial sexual activity taking place on the premises; and

WHEREAS, the Hayward Police Department has conducted investigations related to alleged sexual acts at massage establishments in the City which necessitate the use of limited resources, and in some instances requires partnership with multiple agencies at both the local and state level, which divert resources from violent crimes and other threats to the City; and

WHEREAS, on December 11, 2025 the Santa Clara County District Attorney's Office announced the arrest of three individuals who are suspected of running a network of brothels in the Bay Area, including one in Hayward. According to the Santa Clara District Attorney, the brothels were operating under legal cover as massage parlors. The Hayward Police Department collaborated with multiple agencies at the local, state and federal levels on the investigation that lead to the arrests of the suspects and identification of over 40 women involved in commercial sex work at the brothels; and

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WHEREAS, the current Police Department framework, which devotes one Seargent and one detective to the Vice Unit, does not afford adequate personnel and resources to effectively monitor massage establishments to ensure they are operating within the confines of local and state law; and

WHEREAS, the City Council of the City of Hayward seeks to protect the public health, safety and welfare of the citizens of Hayward from the negative secondary effects associated with massage establishments operating in violation of state and local law; and

WHEREAS, California Government Code section 65858 authorizes the City Council, by four-fifths (4/5) vote, to adopt an interim ordinance to prohibit uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is studying or intends to study within a reasonable time; and

WHEREAS, on December 16, 2025, the City Council adopted Ordinance No. 25-16, an interim urgency ordinance pursuant to Government Code section 65858, imposing a 45-day moratorium on approval of new massage businesses in Hayward; and

WHEREAS, in order to promote and protect the public health, safety and welfare, and to allow staff an opportunity to further study the impacts of such business activities on the health, safety, and welfare, and to consider possible amendments to the Hayward Municipal Code, it is necessary that this interim urgency Ordinance be enacted and the moratorium imposed by Ordinance No. 25-16 be extended up to 10 months, 15 days; and

WHEREAS, the moratorium imposed by Ordinance No. 25-16 will expire on January 30, 2026, unless extended pursuant to Government Code section 65858; and

WHEREAS, on January 16, 2026, a notice of the public hearing on the extension of the moratorium imposed by Ordinance No. 25-16 was published in the Daily Review, in compliance with the requirements of Government Code sections 65090, 65094, and 6061; and

WHEREAS, this Ordinance is intended to be of limited duration of no more than 10 months, 15 days unless extended pursuant to existing law, and accordingly, nothing in this Ordinance is intended to effect or be construed to effect an unconstitutional taking of a property interest of any permitted use during its duration; and

WHEREAS, city staff has begun the process of developing new massage regulations which are anticipated to be presented to the City Council in Spring 2026; and

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WHEREAS, it is the intent of the City Council that the temporary moratorium will automatically terminate upon the effective date of updated massage regulations; and

WHEREAS, in accordance with California Government Code Section 65858(a), a public hearing was held concerning the adoption of this Ordinance.

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. PURPOSE

The purpose of this interim urgency ordinance is to establish a temporary moratorium on issuance of massage establishment permits, business licenses, conditional use permits and any other approvals for massage establishments in the City to allow staff the opportunity to craft a more comprehensive approach to regulating massage establishments, and to avoid the negative secondary effects on the public health, safety and welfare.

Section 2. AUTHORITY

The City Council enacts this interim urgency ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution, Section 51031 of the California Government Code, Section 65858 of the California Government Code and Section 617 of the City Charter.

Section 3. DEFINITIONS

For the purposes of this ordinance, the terms defined below shall have the following meanings:

A. "Massage" shall mean the scientific manipulation of the soft tissues. For purposes of this definition, the terms "massage", "massage therapy", and "bodywork" shall have the same meaning.

B. "Massage Establishment" shall mean a fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.

C. "Massage Practitioner" shall mean a person who is certified by the California Massage Therapy Council pursuant to CA Business and Professions Code Section 4604.2 and who administers massage for compensation.

D. "Massage Therapist" shall mean person who is certified by the California Massage Therapy Council under CA Business and Professions Code Section 4604 and who administers massage for compensation. For purposes of this definition, "Massage therapist", "Massage Technician", and "Masseuse" shall have the same meaning.

E. "Managing Employee" shall mean any employee of a massage establishment who has been designated by the massage establishment permittee to manage the business.

F. "Permit" shall mean a Massage Establishment Permit issued pursuant to Chapter 6, Article 10 of the Hayward Municipal Code, as well as any land use entitlement or use permit issued

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pursuant to Chapter 10 Article 1 of the Hayward Municipal Code, and any business license issued pursuant to Chapter 8, Article 1 of the Hayward Municipal Code.

G. "Person" shall mean any individual, co-partnership, firm, association, joint stock company, corporation, joint venture, or combination of individuals of whatever form or character.

Section 4. FINDINGS

The City Council of the City of Hayward hereby finds:

A. The City has received applications for issuance of massage establishment permits, as well as applications for business licenses and use permits for the establishment and/or conducting of massage.

B. The City is authorized by virtue of the California State Constitution and California Government Code Section 51031 to regulate massage establishments and massage practitioners by imposing reasonable standards relative to the skill and experience of massage practitioners and reasonable conditions on the operation of massage establishments.

C. There is a significant risk of injury to massage clients by improperly trained and/or educated massage practitioners and the City has a legitimate interest in providing reasonable safeguards against injury and economic loss to such massage clients.

D. Massage establishments are businesses which involve significant intimate contact between persons which creates opportunities for acts of prostitution and other unlawful sexual activity to occur.

E. The establishment of reasonable standards for the issuance of permits and restrictions on the operations of massage establishments would serve to reduce the risk of illegal activity.

F. The Hayward Police Department has become aware of instances of commercial sex work taking place at permitted and unpermitted massage businesses within the city, which have resulted in criminal investigations and prosecutions.

G. There are currently 17 permitted massage establishments in the City, with 10 of those establishments having complaints of illicit activity.

H. On October 8, 2025, the Police Chief revoked a massage establishment permit for a business in Downtown Hayward based on evidence of commercial sexual activity taking place on the premises.

I. On December 11, 2025 the Santa Clara County District Attorney's Office announced the arrest of three individuals who are suspected of running a network of brothels in the Bay Area, including one in Hayward. According to the Santa Clara District Attorney, the brothels were operating under legal cover as massage parlors. The Hayward Police Department collaborated with multiple agencies at the local, state and federal levels on the investigation that lead to the arrests of the suspects and identification of over 40 women involved in commercial sex work at the brothels

J. There is a current and immediate threat to the public health, safety and welfare because without the moratorium, a massage establishment could be granted a license or an

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overconcentration of massage establishments could occur within the City without full protection to the City from the secondary effects of massage establishments.

K. The City is currently studying revised regulations to preserve the public health, safety and welfare of its citizens, which staff intends to present to the City Council for consideration in Spring 2026.

Section 5. APPLICABILITY

The regulations set forth in this Ordinance shall apply to the issuance of massage establishment permits issued pursuant to Chapter 6, Article 10 of the Hayward Municipal Code, as well as any land use entitlement or use permit issued pursuant to Chapter 10 Article 1 of the Hayward Municipal Code, and any business license issued pursuant to Chapter 8, Article 1 of the Hayward Municipal Code, and any other applicable entitlements or approvals for the establishment and/or operation of massage establishments. A temporary moratorium is not placed on the issuance of renewals of currently valid business licenses, massage establishment permits, or other renewable approvals applicable to massage establishments. An application to renew an existing permit or approval that includes a change in ownership shall be subject to the temporary moratorium.

Section 6. REGULATION

No application for massage establishment permits, as those terms are defined herein, business licenses, use permits or other applicable entitlements for the establishment of a massage establishment shall be considered or approved and no such permits, business licenses, use permits or other applicable entitlements shall be issued unless the application was deemed complete and approved prior to the adoption of this Ordinance. The preceding sentence shall also apply to applications submitted by new owners of an existing permitted massage establishment. Notwithstanding any other provision of the Hayward Municipal Code or any other ordinance or regulation of the City to the contrary, no permit or entitlement for use or environmental document which either directly or indirectly has as its result the approval or allowance of a massage establishment, shall be approved, or granted while this Ordinance remains in effect.

Section 7. ENFORCEMENT

- (a) It shall be the duty of the Chief of Police, and all officers and employees of the City of Hayward to enforce all provisions of this Ordinance.
- (b) Any person, firm or corporation, whether as principal or agent, employee or otherwise, violating or causing or permitting the violation of any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the Alameda County Jail for a term not exceeding one hundred eighty days or by both such fine and imprisonment. Such person, firm or corporation shall be deemed to be guilty of a separate offense for each

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day during any portion of which a violation of this Ordinance is committed, continued or permitted by such person, firm or corporation, and shall be punishable as herein provided.

(c) As an alternative to the provisions described in subsection (b), violations of this Ordinance may be enforced administratively pursuant to the provisions of Chapter 1, Article 3 of the Hayward Municipal Code.

(d) Any violation of this Ordinance shall constitute a public nuisance. In addition to any other remedies provided by law, the City may summarily abate such nuisance or may bring a civil suit to enjoin or abate the violation.

Section 8. NO TAKING OF PROPERTY INTENDED

Nothing in this Ordinance shall be interpreted to effect an unconstitutional taking of the property right of any person. If the City Council determined, based on specific evidence in the administrative record, that the application of one or more provisions of this Ordinance to a proposed project would effect an unconstitutional taking of a property right, the City Council shall disregard such provision or provisions to the extent necessary to avoid such unconstitutional taking.

Section 9. California Environmental Quality Act. Adoption of this Ordinance is exempt from environmental review as the adoption of this Ordinance does not qualify as a "project" pursuant to the California Environmental Quality Act ("CEQA"), under Public Resource Code Section 21065 and CEQA Guidelines Section 15320, 15378, and 15061(b) (3) as there is no possibility that such action would cause either a direct, or reasonably foreseeable indirect, physical change in the environment.

Section 10. If any section, subsection, paragraph, or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid, or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed each section, subsection, clause or phrase hereof irrespective of the fact that any one or more section, subsections, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 11. This is an ordinance for the immediate preservation of the public peace, health, and safety, and shall take effect immediately in accordance with California Government Code Section 36937 and section 620 of the Charter of the City of Hayward, upon the approval of four-fifths of the City Council. The moratorium imposed by this Ordinance shall terminate 10 months and 15 days after its adoption, or upon the effective date of amendments to the Hayward Municipal Code addressing massage businesses, whichever is earlier. Nothing in this section is intended to preclude a final extension of the moratorium as allowed by Government Code section 65858, should it be necessary.

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INTRODUCED and ADOPTED at a regular meeting of the City Council of the City of Hayward, held the __ day of __, 2026, by Council Member _____,

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward