

URGENCY ORDINANCE NO. 14-933

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA PUENTE ADOPTING A CITYWIDE MORATORIUM ON THE ESTABLISHMENT, EXPANSION OR RELOCATION OF NEW AND EXISTING MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS

THE CITY COUNCIL OF THE CITY OF LA PUENTE DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

The City Council adopts this ordinance based upon the following findings and determinations:

- A. The City of La Puente (“City”) has an overriding interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City’s interest in maintaining the quality of urban life and the character of the City’s neighborhoods. Without stable, well-planned neighborhoods, areas of the City can quickly deteriorate, with tragic consequences to social, environmental and economic values.
- B. Cities have traditionally had a high degree of local control related to local zoning and land use.
- C. In 1999, the City adopted Chapter 5.36 of the La Puente Municipal Code (“Code”), which prohibits any person from practicing massage or operating a massage establishment without first securing a business permit under Chapter 5.08. Chapter 5.36 established standards for massage technicians and massage establishments, and ensured that those offering massage services are qualified, adequately trained, and conduct their work in a lawful and professional manner.
- D. Section 5.36.060 of the City’s Code established employee reporting requirements, operational standards for a massage establishment and background and certain hygiene regulations upon massage businesses. Chapter 5.36 did not, however regulate the location or zoning of massage establishments or the number of practitioners or establishments within the City.
- E. The City’s Zoning Code (Title 10, Zoning) is silent as to the permissible locations for massage establishments.

- F. In 2008, the California Legislature adopted Senate Bill 731, the Massage Therapy Act, (Cal. Bus. & Prof. Code §§ 4600 *et seq.*), which placed substantial limits on a city's ability to regulate business licensing, zoning, and health, safety and welfare issues related to massage establishments.
- G. The 2008 State law has had the unintended consequence of resulting in a proliferation of massage establishments throughout California, many of which are believed to be fronts for prostitution and/or sex or human trafficking.
- H. In September 2014, the Governor signed AB 1147, which returns to local governments the authority to more strictly regulate the zoning requirements of massage establishments. The new law, which becomes effective on January 1, 2015, authorizes cities and counties to enforce their zoning requirements on massage establishments, subject to certain restrictions.
- I. The City's massage regulations have not been updated since 1999, and the City does not currently have any zoning regulations pertaining to massage establishments.
- J. Without appropriate land use and development standards and regulations, massage establishments and technicians pose a number of immediate threats to the public health, safety and welfare of the City, including potential negative secondary effects including increased crime and blight, which in turn may adversely affect the City's ability to attract and retain consumers, thereby damaging the City's economic vitality. Further, the location of massage establishments may result in an incompatibility of uses throughout the City.
- K. Urgency Ordinance No. U11-918 was adopted by the City Council on September 16, 2011, imposing a 45 day moratorium on the establishment, expansion, or relocation of new and existing massage establishments and technicians. On October 25, 2011, the City Council extended the Ordinance for a period of 10 months and 15 days, in accordance with the provisions of Government Code Section 65858, and the City Council lawfully extended the Ordinance for an additional 12 months on August 28, 2012.
- L. Pursuant to Government Code Section 65858(f), the City is permitted to adopt additional moratoria on the same subject matter provided that the new moratorium relates to an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior moratorium. Here, there is a different event, occurrence and set of circumstances in that with the adoption of AB 1147, the City has been given new tools to more effectively deal with the negative impacts associated with massage establishments and technicians. It is therefore necessary for the City to explore its zoning and other options under the new provisions of State law.

- M. The City will take steps to update its Municipal Code and Zoning Ordinance to ensure the City's laws are consistent with the goals, policies and standards of the General Plan, State law, including AB 1147, and the goals of the City Council, all which are meant to protect the public health, safety, and welfare; and
- N. The City will consider other existing and potential land uses within the City to assure a degree of compatibility between the location of massage practice and surrounding properties, and study revisions to the Zoning Ordinance; and
- O. The City seeks a moratorium on establishment, relocation, or expansion of massage technicians and establishments to provide the City time to study and plan its approach to massage regulation following the approval of AB 1147.
- P. This ordinance is exempt from CEQA based on the following findings:
 - 1. This ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines because it has no potential for resulting in a physical change in the environment, directly or indirectly.
 - 2. This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines, as it is a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858, to assure maintenance and protection of the environment and adoption of contemplated local legislation, regulation and policies.
 - 3. This ordinance is not subject to CEQA under the general rule set forth in Section 15061(b)(3) of the CEQA Guidelines that CEQA only applies to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2) above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

SECTION 2. Imposition of Moratorium.

- A. The City Council finds and determines that the Recitals set forth in Section 1 are true and correct and are incorporated herein by reference.
- B. In accordance with the authority granted pursuant to Government Code Section 65858, from and after the effective date of this Ordinance, no person, partnership, corporation, or other entity shall commence doing business as, or operations of, a massage practice or massage establishment, nor shall a business permit or other entitlement be issued to a massage technician or massage establishment unless specifically excluded herein. Massage establishments are prohibited from expansion during the time of this Ordinance. The employment of any additional massage technicians or massage therapists beyond the number allowed at the

massage establishment as of the date this Ordinance is adopted shall constitute expansion for purposes of this Ordinance.

C. Exemptions:

This Ordinance shall not prohibit the following:

1. The renewal of a business permit for an existing massage establishment provided that the renewal seeks to maintain the business in its current location, and the massage establishment is operating in a manner, and housed within a building, which complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws; or
2. The renewal of a business permit for a massage technician, as long as the technician remains employed at the same massage establishment where he or she was previously licensed, and as long as there are no existing violations of City, State, Federal or otherwise applicable, codes, rules, regulations or laws by the massage technician or the massage establishment; or
3. The issuance of a new permit to a massage technician for employment at a massage establishment which has dismissed or lost an employee, as long as the former employee surrendered to the City his or her massage technician permit, and the massage establishment is operating in a manner, and housed within a building, that complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws.
4. (a) Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists or acupuncturists who are duly licensed to practice within the scope of their licenses; (b) Persons employed at hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the state; (c) Coaches or trainers acting within the scope of their employment at accredited high schools, junior colleges, colleges or universities; (d) Trainers of amateur, semi-professional or professional athletes or athletic teams while engaged in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event, such as road races, track meets, triathlons, or similar single occurrence athletic events or recreational events.
5. The issuance of a business license to, or relocation of, a massage establishment certified by the California Massage Therapy Council until AB 1147 takes effect on January 1, 2015.

- D. Except as extended by Government Code 65858, this moratorium shall last until a detailed study may be made and the zoning and public hearing process pertaining to those matters is completed, or until forty-five (45) days from the date of adoption of this Ordinance, whichever occurs sooner.

Section 3. Purpose.

This ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code Section 65858 and is for the immediate preservation of the public peace, health and welfare. This Ordinance is deemed necessary based on the Recitals set forth in Section 1, and for the following reasons:

- A. The purpose of this ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by the establishment or relocation of new and existing massage establishments in the City, in light of the State Legislature's recent passage of AB 1147, which reinstates significant local control over massage establishments to local jurisdictions, until such reasonable time as a detailed study of the possible adverse impacts such establishments might have on commercial and residential uses and the general public health, safety and welfare.
- B. The City Council finds that massage establishments, whether as a result of the manner or hours of operation, security, or lack thereof, siting, or maintenance, have the potential of becoming a source of criminal or other activity, resulting in the creation of a public nuisance.
- C. There are no existing regulations within the City's zoning ordinance that address the location of massage establishments, and massage is not prohibited adjacent to schools, public parks, or public libraries in the City. Locations such as these can be particularly sensitive to the potential harmful effects of massage establishments. As applications for business licenses are submitted to the City, there is no determination as to whether the locations of such uses are consistent with the purpose and intent of the City's Zoning Code. Unregulated locating of such establishments may be in conflict with contemplated zoning and with the public peace, health and welfare. Further, with the State Legislature's recent passage of AB 1147, which will become law on January 1, 2015, cities are able to re-establish some local land use control over massage establishments.
- D. Issuing business licenses prior to the completion of the City's study of the potential impact of massage establishments and technicians poses a current and immediate threat to the public health, safety and welfare.
- E. The City has concluded that the best method of protecting the public safety, health, and welfare is to revise regulations concerning location and operation of new, relocated and expanded massage establishments.

- F. The City Council finds that it is necessary to ensure that these types of businesses are properly located within the City, both to protect the public health, safety and welfare, and to ensure that these businesses are located in a manner that is consistent with City standards, goals and policies.
- G. Thus, in view of the facts set forth in this ordinance, it is necessary to immediately study, hold public hearings, and consider an amendment of the City's Municipal Code and Zoning Ordinance and adoption of restrictions or regulations as they may be recommended to the City Council by the Planning Commission and City Staff. A comprehensive set of restrictions and regulations cannot be enacted without due deliberation, and it will take an indeterminate length of time to work out the details of such comprehensive restrictions. It would be destructive of the proposed restrictions if, during the period they are being studied and are the subject of public hearings, parties seeking to evade the operation of these restrictions in the form which may be adopted should be permitted to operate in a manner which might progress so far as to defeat in whole or in part the ultimate objective of those restrictions. Therefore, the approval of additional use permits, variances, building permits, or other entitlement to use which is required in order to comply with the City's zoning ordinance would result in a threat to public health, safety or welfare.
- H. On the basis of the foregoing findings, all evidence on the record including but not limited to the staff report and testimony from staff, the City Council finds that the prohibiting the establishment, relocation and expansion of massage technicians and massage establishments is justified in accordance with California Government Code section 65858.

Section 4. Compliance with the California Environmental Quality Act ("CEQA").

This ordinance is exempt from CEQA based on the following findings:

- A. This ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines because it has no potential for resulting in a physical change in the environment, directly or indirectly.
- B. This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines, as it is a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858, to assure maintenance and protection of the environment and adoption of contemplated local legislation, regulation and policies.
- C. This ordinance is not subject to CEQA under the general rule set forth in Section 15061(b)(3) of the CEQA Guidelines that CEQA only applies to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2) above, it can be seen with certainty

that there is no possibility that this ordinance will have a significant effect on the environment.

Section 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 6. Effective Date.

Pursuant to Government Code Section 65858, this Ordinance shall become effective immediately upon adoption, if passed and adopted by at least a four-fifths vote of the City Council.

PASSED, APPROVED AND ADOPTED this 9th day of December, 2014, by the following vote:

AYES: COUNCILMEMBERS: Lewis, Holloway, Argudo, Klinakis and Muñoz
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None



Violeta Lewis, Mayor

ATTEST:



Sheryl Garcia, Chief Deputy City Clerk