

ORDINANCE NO. 1249

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIMI VALLEY PARTIALLY LIFTING THE MORATORIUM ON THE ISSUANCE OF ANY NEW PERMIT, LICENSE, APPROVAL OR ENTITLEMENT RELATED TO EXISTING MASSAGE ESTABLISHMENTS, EXISTING OFF-PREMISES MASSAGE BUSINESSES, AND MASSAGE PRACTITIONER EMPLOYEES, AND A DETERMINATION THAT THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, effective January 1, 2015, the City's authority to regulate massage establishments was significantly restored due to the passage of Assembly Bill 1147, allowing the City to study and consider measures to ensure the City's Zoning Ordinance is consistent with the City's General Plan's goals to protect the public health, safety, and welfare, community character, and quality of life; and

WHEREAS, although massage establishments generally have a legal status similar to other professional services, such as medical, dental, and law offices, the City of Simi Valley, similar to and in accordance with the findings made by other cities in the county such as the City of Ventura, finds that massage businesses frequently do not conduct themselves like other professional service businesses, despite certification by California Massage Therapy Council (CAMTC) of their employees; and

WHEREAS, the provisions of the Simi Valley Municipal Code pertaining to massage establishments and therapists will be affected by and have potential conflicts with state law making it difficult to enforce; and

WHEREAS, since City actions in 2012 in response to Senate Bill 731 (2009), Assembly Bill 619 (2011), and Senate Bill 1238 (2012), the Simi Valley Chief of Police continues to report to the City Council that law enforcement and regulatory officials had reason to believe, and have received an increase in reports of illicit activity and operations that may engage in prostitution or other unlawful activity; and

WHEREAS, other cities throughout the State have adopted moratoriums on the issuance of massage establishment and therapist permits in an effort to study the effects of AB 1147 and its implementation; and

WHEREAS, on January 12, 2015, the City Council adopted Ordinance No. 1236 establishing a moratorium as an urgency ordinance on the issuance of any new

permit, license, approval, or entitlement relating to new massage establishments or massage therapist permits for a period of 45 days, and on February 23, 2015, the City Council extended the ordinance for one year to January 12, 2016; and

WHEREAS, since the adoption of the moratorium, City staff has researched and analyzed ordinances in other municipalities; researched State legislation and Business and Professions code that may impact the massage establishments; researched best practices to address illicit activities through land use and conditions of operation; and considered the effects and implementation of the provisions of AB 1147; and

WHEREAS, this urgency ordinance is exempt from review under the California Environmental Quality Act (CEQA; California Public Resources Code Section 2100 et seq.) and CEQA regulations (Title 14, California Code of Regulations Section 15000, et seq.) because this urgency ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3)), and the extension of urgency interim ordinances is not subject to procedures otherwise required for adoption of zoning or subdivision ordinance (California Government Code Section 65858).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings. The Simi Valley City Council finds, determines, and declares as follows:

(a) Senate Bill 731, effective January 1, 2009, established a state licensing process for massage therapists and practitioners, and substantively eliminated local control over massage practitioners and establishments as codified in Business and Professions Code 4600, et seq.

(b) In 2009, the Simi Valley Chief of Police reported to the City Council a marked increase in applications for massage establishments and sole-proprietor practitioners, with totals of 29 licensed establishments and 320 licensed massage therapists. City law enforcement and regulatory officials had reason to believe that most of the increase was related to operations that may engage in prostitution or other unlawful activity. The City of Simi Valley responded with a Massage Ordinance (Title 5, Chapter 15) that regulated massage business owners, establishments, and massage practitioners to the extent allowed by SB 731.

(c) In 2011, Assembly Bill 619, and in 2012 Senate Bill 1238, further amended sections of Business and Professions Code Section 4600 et seq., additionally limiting the City's ability to regulate massage establishments.

(d) Effective January 1, 2015, the City's authority to regulate massage establishments was significantly restored due to the passage of Assembly Bill 1147, and the City Council adopted Ordinance No. 1236, allowing the City to study and consider measures to ensure the City's Zoning Ordinance is consistent with the City's General Plan goals to protect the public health, safety and welfare, community character, and quality of life and comply with state law.

(e) At the end of 2014, the City had approximately 29 licensed establishments and 84 licensed practitioners. The City Council finds, however, that law enforcement staff have received an increasing list of complaints of suspected illicit activity occurring at massage establishments, and therefore, require a higher level of scrutiny and Police Department support and enforcement to ensure compliance with City and state laws.

(f) The Police Department reports that the number of establishments advertising in a sexually explicit manner and reviewed for sexual activities on-line and in adult entertainment media avenues has dramatically increased, strongly suggesting an increase in illicit activity.

(g) Other cities throughout the state including the City of Ventura have reported similar increases in establishments and reports of illicit advertising and activities.

(h) Although massage establishments generally have a legal status similar to other professional services, such as medical, dental, and law offices, the City of Simi Valley, similar to and in accordance with the findings made by other cities in the county such as the City of Ventura, finds that massage businesses frequently do not conduct themselves like other professional service businesses, despite certification by CAMTC of their employees.

(i) The City Council recognizes that the oversaturation of massage establishments changes the character of a neighborhood and causes blight, and the concentration of land uses and associated illicit activities impacts the quality of life, health, and safety for residents of the City of Simi Valley.

(j) The City Council passed Ordinances 1236 and 1238 to urgently undertake a review of current massage regulations in order to determine an appropriate response to AB 1147 to ensure consistency with the Massage Ordinance and the Massage Act (State law), and to study land use issues related to CUPs, concentration, saturation, operational characteristics, and consistency with the General Plan that will allow legitimate therapeutic massage business to exist, while discouraging unlawful sexual activity and human trafficking associated with prostitution.

(k) The City Council adopted Ordinance No. 1246 to provide for updated rules and regulations related to massage establishments, off-premises massage businesses, and massage practitioners.

SECTION 2. Partial Lifting of Moratorium on Existing Massage Establishments, Existing Off-Premises Massage Businesses, and Massage Practitioner Employees

(a) The findings and determinations in Section 1 are true and correct.

(b) Based on the foregoing, the City Council finds and declares that local control will be improved with the implementation of Ordinance No. 1246

addressing existing massage establishments, businesses, and practitioners, effective October 13, 2015.

(c) Pursuant to California Government Code Section 65858, the City hereby lifts the moratorium allowing permits, licenses, tax certificates, approvals and entitlements to be applied for, and issued for, existing Massage Establishments and existing Off-Premises Massage Businesses operating from the same existing location (as defined in and pursuant to Simi Valley Municipal Code Title 5, Chapter 15 as updated by Ordinance No. 1246 relating to such businesses), and for Permit Enforcement to begin under Ordinance 1246. After the passage of this Ordinance, new owners may acquire existing Massage Establishments and existing Off-Premises Massage Businesses, but a new prospective owner of such business must submit a new application for a Permit, which can be granted by the City provided all relevant requirements are met, as Permits are not transferrable or assignable, and may not operate without a Permit or move the location of such business. Existing establishments and businesses are those with valid active permits and/or Business Tax Certificates on January 12, 2015, the date of the original moratorium, and includes independent contractors (business owners) who prove to the reasonable satisfaction of the City that they were operating in the City as of January 12, 2015, but who may not have yet acquired a Business Tax Certificate as a business owner. This Ordinance is effective immediately, and therefore will also cause the provisions to become operative of Ordinance No. 1246 providing for existing establishments and businesses to apply for a Massage Establishment or Off-Premises Massage Business Permit within 90 days and requiring compliance with all provisions of that Ordinance No. 1246. Under this partial lifting of the moratorium, existing employees would also be required to register with the City as outlined in Ordinance No. 1246. Further, existing personnel working in establishments other than their own (considered independent contractors or 1099-employees), and who may or may not have valid Business Tax Certificates with the City of Simi Valley on January 12, 2015, are independent business owners, and as owners, must apply for an Off-Premises Massage Business permit, as specified in Ordinance No. 1246, although the granting of such permit will not allow these 1099-employees or independent contractors to open new physical locations. This Ordinance enables inspection or enforcement activities relating to existing Massage Establishments and massage professionals to begin, and all applicable sections of the Simi Valley Municipal Code relating to enforcement thereof shall remain in full force and effect.

(d) The violation of any of the provisions of the Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance.

SECTION 3. Severability. If any provision of this Ordinance is declared invalid by a court of competent jurisdiction, adjudicated to a final determination, the City Council finds that said voided part is severable, that the City Council would have adopted the remainder of this Ordinance without the severed and voided part, and that the remainder of this Ordinance shall remain in full force and effect.

SECTION 4. Incompatible Provisions. To the extent any provision of this Ordinance is incompatible with or at variance with any prior adopted ordinance or resolution, the provision of this Ordinance shall take precedence.

SECTION 5. The City Clerk shall cause this Ordinance or a summary hereof to be published in accordance with Section 36933 of the California Government Code, shall certify to the adoption of this ordinance, and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.

PASSED AND ADOPTED this 12th day of October 2015.

Attest:

/s/
Ky Spangler, Deputy Director/City Clerk

/s/
Robert O. Huber, Mayor of the City of
Simi Valley, California

Approved as to Form:

Approved as to Content:

/s/
Lonnie J. Eldridge, City Attorney

/s/
Eric J. Levitt, City Manager

/s/
Peter Lyons, Director
Department of Environmental Services