

ORDINANCE NO. 1251

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIMI VALLEY EXTENDING FOR AN ADDITIONAL 12 MONTHS A MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF MASSAGE ESTABLISHMENTS OR OFF-PREMISES MASSAGE BUSINESSES UNLESS EARLIER REPEALED OR SUPERSEDED

WHEREAS, 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.; and

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 accord 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;

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;

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;

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

WHEREAS, on December 31, 2015, the a report was issued pursuant to Government Code Section 65858(d) discussing the measures taken to address pertinent issues prior to the expiration of the moratorium and hereby ratify its issuance; however, there has been insufficient time to adequately study and adopt necessary revisions to the City's massage regulations for new businesses and to review implementation of first step measures to permit existing businesses; and

WHEREAS, an extension will allow staff to finish analysis on any contemplated municipal code amendments and draft any new ordinance(s) related to the City's ability to regulate massage establishment owners and off-premises business owners in compliance with AB 1147, and therefore it is desirable to further extend the moratorium until such analysis is completed; 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 recitals set forth above are hereby adopted as findings. In addition, the Simi Valley City Council finds, determines, and declares as follows:

A. Effective September 1, 2009, the City's authority to regulate massage establishments and therapists was greatly reduced due to passage of State law as outlined in Business and Professions Code Section 4600 et seq.

B. 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.

C. At the end of 2014, the City had 29 licensed establishments and 84 licensed practitioners. 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. 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.

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

E. Assembly Bill 1147, effective January 1, 2015, effectively restores the City's ability to regulate massage establishments and their owners through land use and regulatory controls affecting the public health, safety, and welfare.

F. As a result of this change in the law, it is urgent that the City 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 zoning, concentration, saturation, operational characteristics, and consistency with the General Plan, that will allow legitimate therapeutic massage services to flourish, while discouraging unlawful sexual activity and associated illicit activities.

G. The City Council finds that this is a matter of city-wide importance and does not direct these actions toward any particular property, owner, or proposed business.

H. After hearing all applicable evidence, the City Council finds that the conditions and findings recited in Ordinances Nos. 1236 and 1238 continue to exist and are incorporated herein by this reference.

I. The City has completed the 90-day application window for existing establishments, many of whom waited until the end of the filing period, and staff is in the process of analyzing the results before contemplating any final recommendations to the City Council related to massage businesses.

J. Based on the foregoing, the City Council finds and declares there is a current and immediate threat to the public health, safety or welfare, and upon that basis has determined that extending an urgency interim Ordinance pursuant to Government Code Section 65858 is warranted and shall take effect on January 12, 2016, upon adoption by a four-fifths vote of the City Council.

SECTION 2. Extension of Moratorium on Establishment or expansion of Massage Establishments and Massage Businesses.

A. The City Council hereby ratifies the Report of Actions Taken During the Moratorium published and dated December 31, 2015 and attached to the City Council staff report as Attachment A;

B. Interim Urgency Ordinance No. 1236, extended by Ordinance No. 1238 and modified by Ordinance No. 1249 is hereby extended for one year, pursuant to California Government Code Section 65858. After the adoption of this ordinance, no permits, license, tax certificates, approvals, or entitlements shall be issued for establishment or expansion of Massage Establishments or Off-Premises Massage Businesses (including sole-proprietors) as defined in and pursuant to Simi Valley Municipal Code Title 5, Chapter 15 relating to such businesses.

C. The City Council directs staff to continue to study modifications to the City's land use and regulatory ordinances within the framework provided in AB 1147, including zoning, saturation, concentration, and health and safety, relating to the

effects of massage establishments, and to develop methods to reduce the negative secondary effects created by the number, location and illegal uses of massage establishments. Such studies should also ensure consistency between State Law and the General Plan.

D. This Ordinance shall not, by itself, preclude the continued operation of any lawfully existing Massage Establishment or Off-Premises Massage Business operations which do not seek to expand, change ownership, convert, or relocate their operations, and that have a pending application submitted to the City of Simi Valley, or whose application(s) were approved or applied for a Massage Establishment Permit or Off-Premises Massage Business Permit on or before January 10, 2016. However, enforcement of all applicable Simi Valley Municipal Code sections relating to such businesses or failures to obtain permit(s) for such business(es) shall continue.

E. 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 a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, 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 11th day of January 2016.

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