

ORDINANCE NO. 35-2014

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF ELK GROVE
DECLARING AND IMPOSING A CITYWIDE MORATORIUM ON THE
ESTABLISHMENT, RE-ESTABLISHMENT, EXPANSION, OR RELOCATION OF
NEW AND EXISTING MASSAGE ESTABLISHMENTS, PRACTITIONERS, AND
THERAPISTS**

WHEREAS, the City of Elk Grove has an interest in planning and regulating the use of property within the City; and

WHEREAS, implicit in any plan or regulation is the City's interest in maintaining the quality of life and character of the City's neighborhoods; and

WHEREAS, without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with consequences to social, environmental, and economic values; and

WHEREAS, on September 27, 2008, the Governor approved Senate Bill 731, which created the California Massage Therapy Council ("CAMTC") to provide voluntary statewide certification of massage practitioners and therapists; and

WHEREAS, Senate Bill 731 and subsequent legislation prohibited cities from requiring licenses or permits of holders of CAMTC certificates and preempted most regulations pertaining to the operation of massage establishments; and

WHEREAS, the Elk Grove Municipal Code ("EGMC") currently regulates massage establishments as permitted by Senate Bill 731 and subsequent regulation, as a result, the City has massage establishments, several of which undermine public health, safety, and welfare; and

WHEREAS, on September 18, 2014, Governor Brown signed Assembly Bill 1147 ("AB1147"), effective January 1, 2015, which revises existing laws regulating certified massage professionals and gives cities some regulatory power over massage establishments, including return of land use authority over massage establishments to cities; and

WHEREAS, the City is concerned that additional massage establishments will rush to open and/or re-establish themselves following a previous business license revocation, prior to AB1147 becoming effective on January 1, 2015, to circumvent the City's expanded authority to regulate massage businesses and thereby increase the potential negative effects of existing and future massage establishments within the City, including detrimental effects on public health, safety, and welfare; and

WHEREAS, there is an immediate threat to the public health, safety, and welfare of the community as massage establishments locate in the City without proper regulations in place and, absent the adoption of this Interim Urgency Ordinance, it is likely that the establishment, re-establishment or operation of massage establishments in locations within the City, without appropriate controls in place to regulate their impacts on the community, will result in harmful effects to the businesses, property

owners, and residents of the City; and

WHEREAS, based on the foregoing, the City Council finds a current and immediate threat to the public health, safety, and welfare would result if the City of Elk Grove issues permits, business licenses, or other applicable entitlements for the establishment, re-establishment, or expansion of massage establishments, practitioners, and therapists prior to the City's study of potential impacts of AB1147 and resolves discrepancies between the existing Elk Grove Municipal Code and recently amended State law; and

WHEREAS, the City Council now desires to adopt this interim Ordinance as an urgency ordinance, effective immediately, and declaring and establishing a temporary moratorium on the establishment, re-establishment, expansion, or relocation of new and/or existing massage establishments, to protect the public health, safety, and welfare

NOW, THEREFORE, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose

This Ordinance is an Interim Ordinance adopted as an urgency measure pursuant to Government Code Section 65858 for the immediate preservation of the public safety, peace, health, and welfare.

Section 2: Findings

- A. Prior legislation, including Senate Bill 731, 294, and 1238, and Assembly Bill 619, preempted the City's authority to regulate massage establishments and providers certified pursuant to Business and Professions Code Section 4600 *et seq.*, the Massage Therapy Act (the "Act").
- B. Recognizing the need to return regulatory power to cities, on September 18, 2014, Governor Brown signed Assembly Bill 1147 ("AB1147"), effective January 1, 2015, which gives cities some regulatory powers over massage establishments by repealing and amending the Act, and amending Section 4600 of the Business and Professions Code and Sections 51034 of the Government Code.
- C. Among other provisions, AB1147 allows the City to:
 1. adopt and enforce an ordinance governing zoning, business licensing, or reasonable health and safety requirements for massage establishments;
 2. limit the location of massage establishments to specific zones without having to place the same restrictions on all other professional services;
 3. establish reasonable and necessary fees and regulations;
 4. require massage establishments to obtain a license, permit, certificate, or other authorization to operate lawfully;

5. establish a business license tax for revenue purposes or to cover the cost of regulation; and
 6. make and enforce all local, police, sanitary, and other regulations relating to massage establishments not in conflict with law.
- D. As a result of this change and the new powers given to the City, it is urgent that the City undertake a review of its current massage establishment regulations to determine how the City's current regulations for the establishment, use, and operation of massage establishments must and may be revised to protect the public health, safety, and welfare.
- E. As currently regulated under State and Municipal Code, massage establishments could create blight, crime, calls for police service, code enforcement, and otherwise negatively impact City resources and have negative secondary effects on surrounding areas by creating an uninviting and potentially dangerous environment which may, in turn, affect the City's economic vitality and ability to attract and retain businesses and shoppers.
- F. The City will take steps to update its Municipal and Zoning Code to ensure the City's laws are consistent with the goals, policies, and standards of the General Plan and the goals of the City Council to protect the public health, safety, and welfare.
- G. The City will consider other existing and potential land uses within the City to assure a degree of compatibility between the location of massage establishments and surrounding properties and study revisions to the Zoning Code.
- H. City staff needs time to study and analyze whether to limit such establishments to certain zoning districts, which districts would be appropriate for such uses, what design and operating conditions and restrictions would advance the public's interest, and the extent to which the City is permitted to regulate such establishments in light of recent legislation.
- J. The best method of protecting the public health, safety, and welfare is to adopt regulations concerning the operation of new, re-established, relocated, and expanded massage establishments, including, but not limited to, their location.
- K. The City would like to enact a comprehensive set of restrictions and regulations following due deliberation and study. The City requires an indeterminate length of time to analyze the details of such comprehensive restrictions. Proposed restrictions would be detrimental if, during the period they are being studied and subject to public hearings, parties seeking to evade operation of these restrictions are permitted to operate in a manner which might progress to defeating the ultimate objective of those restrictions in whole or in part. Therefore, approval of new, re-established, and additional business licenses, permits, zoning entitlements, and building permits would threaten the public health, safety, and welfare.

- L. There is a current an immediate threat to the public health, safety, and welfare, and an urgency ordinance seeking a moratorium on the establishment, re-establishment, relocation, or expansion of massage establishments, practitioners, and therapists, is warranted to protect the public against potential negative health, safety, and welfare impacts and to address potential deficiencies in the Municipal Code associated with massage establishments.

Section 3. Imposition of a Moratorium

- A. Government Code Sections 36937 and 65858 authorize the adoption of an urgency ordinance to protect the public health, safety, and welfare and to prohibit certain land uses that may conflict with land use regulations that the City's legislative bodies are considering or intend to study within a reasonable time.
- B. This Ordinance temporarily prohibits the establishment, re-establishment, expansion, or relocation of new and existing massage parlors, establishments, practitioners, technicians, and therapists, within the City until such reasonable time as a study of the possible adverse impacts such establishments might have on commercial and residential uses and the general public health, safety, and welfare is completed.
- C. Moratorium. During the effective dates of this Ordinance, no person, partnership, corporation, or other entity or association shall commence doing business as, or operations of, a massage parlor, establishment, practitioner, technician, or therapist in any zoning district within the City, nor shall any permit or business license or other entitlement be issued to a massage parlor, establishment, practitioner, technician, or therapist, pursuant to the Municipal Code, unless expressly authorized herein. No person, partnership, corporation, or other entity or association shall expand an existing massage parlor or establishment nor shall any suspended or revoked business or special business license be reinstated unless expressly authorized herein.

Section 4. Scope and Applicability of Moratorium

- A. Term. Subject to any extensions adopted pursuant to Government Code 65858, this moratorium shall be in effect for forty-five (45) days from the date of adoption of this Ordinance.
- B. Exemptions. This Ordinance shall not prohibit any of the following:
 - 1. The renewal of a massage permit or business license for an existing massage establishment as of the date of adoption of this Ordinance provided that the renewal seeks to maintain the business in its current state of operations and location, and does not seek to expand the business operations or location, and that 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.

2. The employment of an additional massage practitioner at an existing massage establishment so long as 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.
3. Persons engaged as: (a) physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice within the scope of their licenses; (b) employed at hospitals, nursing homes, sanitariums, or any other health facility licensed by the state; (c) coaches or trainers acting within the scope of their employment at accredited high schools, junior colleges, colleges or universities; and (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.

Section 5. California Environmental Quality Act (CEQA)

Finding: The City Council hereby finds that the adoption of this Ordinance is not a "project" under the California Environmental Quality Act (CEQA) pursuant to sections 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the establishment of any new massage businesses, nor does it authorize the construction of any new structures or other physical changes to the environment. This Ordinance has no potential for resulting in physical change to the environment directly or indirectly in that it prevents change to the environment pending the completion of the contemplated research and studies. Therefore, this action is exempt under sections 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State CEQA Guidelines.

Section 6: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 7: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 8: Savings Clause

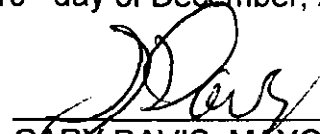
The provisions of this Ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 9: Effective Date and Publication

This Interim Urgency Ordinance: (a) is necessary for the immediate preservation of the public health, safety, and welfare; (b) contains findings constituting an urgency; (c) is effective immediately upon adoption, if adopted by at least four-fifths vote of the City Council; and (d) shall be in effect for forty-five (45) days from the date of adoption unless extended by the City Council as provided for in Section 65858(a) of the Government Code. A certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: 35-2014

PASSED, APPROVED, AND ADOPTED this 10th day of December, 2014.




GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: December 22, 2014

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 35-2014

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing urgency ordinance, published and posted in compliance with State law, was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 10, 2014 by the following vote:

AYES : **COUNCILMEMBERS:** **Davis, Hume, Detrick, Ly, Suen**

NOES: **COUNCILMEMBERS:** **None**

ABSTAIN: **COUNCILMEMBERS:** **None**

ABSENT: **COUNCILMEMBERS:** **None**

A summary of the ordinance was published pursuant to GC 36933(c) (1).



Jason Lindgren, City Clerk
City of Elk Grove, California