

ORDINANCE NO. 02-2015

URGENCY ORDINANCE EXTENDING 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; however, 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, on December 10, 2014 the Elk Grove City Council adopted Interim Urgency Ordinance No. 35-2014 pursuant to Government Code 65858, establishing a 45-day moratorium on the establishment, re-establishment, expansion, or relocation of certain new and existing massage establishments, practitioners, and therapists within the City; 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, expansion or relocation 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 a 10 month and 15 day extension of Ordinance No. 35-2014, extending the temporary moratorium on the establishment, re-establishment, expansion, or relocation of new and/or existing massage establishments, subject to certain express exemptions, to allow staff sufficient time to review and revise the Elk Grove Municipal Code relative to massage businesses to ensure the public's health, safety, and welfare.

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

Section 1: Purpose and Intent.

It is the purpose and intent of this ordinance to extend the moratorium on the establishment, re-establishment, expansion, or relocation of new and existing massage establishments, practitioners, and therapists within the City, all as set forth in Ordinance 35-2014, to afford the City time to further investigate and study the effects of such establishments on the City and to safeguard the health, safety, and welfare of its residents. Therefore, it is the intent of the City Council to extend the moratorium on the establishment, re-establishment, expansion, or relocation of new and existing massage establishments, practitioners, and therapists within the City all as set forth in in Ordinance 35-2014, which is incorporated herein by reference. During the time this extended moratorium is in effect, City staff shall review existing regulations, consult with interested persons and agencies, and shall propose new regulations and ordinances applicable to such businesses for the City Council's consideration. This moratorium may be further extended pursuant to Government Code Section 65858 or other applicable law.

Section 2: Term/Extension

Ordinance 35-2014, and all terms and provisions therein, are hereby extended and shall be in effect from the date of adoption of this ordinance and for a period of ten (10) months and fifteen (15) days thereafter, unless it is further extended pursuant to California Government Code Section 65858 or other applicable law, or repealed before its expiration, as approved by the City Council.

Section 3: 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 4: 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 5: 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 6: 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 effect 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 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 7: Effective Date and Publication

This extension of the 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 ten (10) months and fifteen (15) 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 Government Code 36933(c)(1).

ORDINANCE: 02-2015

PASSED, APPROVED, AND ADOPTED this 14th day of January 2015.



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: January 22, 2015

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 02-2015

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 January 14, 2015 by the following vote:

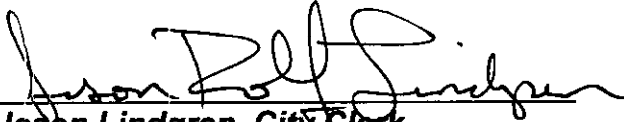
AYES : COUNCILMEMBERS: Davis, Detrick, Ly, Suen

NOES: COUNCILMEMBERS: Hume

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