

ORDINANCE NO. 851

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE,
CALIFORNIA, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE
SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON
ESTABLISHING, LOCATING, OR OPERATING NEW MASSAGE ESTABLISHMENTS IN
THE CITY AND THE GRANTING OR ISSUING OF ANY ZONING CLEARANCE,
LICENSE OR PERMIT BY THE CITY WITH RESPECT THERETO**

THE CITY COUNCIL OF THE CITY OF DUARTE DOES ORDAIN AS FOLLOWS:**SECTION 1. Findings.** The City Council finds and determines as follows:

- A. Title 5 of the Duarte Municipal Code sets forth Business Licenses and Regulations for Massage Establishments. Title 5, Chapter 5.56 sets forth licensing requirements and regulations pursuant to Business and Professions Code section 4600 et seq. relating to the regulation of massage or massage services, which shall include but are not limited to services referred to as “bodywork and acupuncture.”
- B. Title 19, Chapter 19.128 of the Duarte Development Code sets forth a procedure used by the City to verify that a proposed land use complies with the list of uses allowed in the zone and the development standards. A zoning clearance is required before the initiation or commencement of any land use not requiring construction of a structure.
- C. In 2008, Senate Bill 731 (“SB 731”) was adopted by the Legislature and signed into law by the Governor and became effective on January 1, 2009. SB 731 shifted the regulation of massage therapists from local jurisdictions to statewide voluntary certification. Current State law significantly limits local land use control of massage uses which has led to the proliferation of massage establishments throughout the State, some which have been known to offer illicit services and/or engaging in human trafficking.
- D. The State is currently considering proposed legislation (AB 1147) which would give local governments greater authority to regulate massage establishments while creating a more robust regulatory system for massage professionals and establishments.
- E. On June 23, 2014, the Senate Business, Professions and Economic Development Committee heard AB 1147 (Bonilla), the California Massage Therapy Reform Act and passed it on an 8-0 vote. The bill now moves to the Senate Appropriations Committee, which will likely hear it in August following the Legislature’s summer recess.
- F. SB 731 sunsets on January 1, 2015, and the League of California Cities, individual cities and other stakeholders have been working to craft new regulations that return a local government’s authority to regulate massage therapists and massage businesses. AB 1147, authored by Assembly Member Susan Bonilla (D-Concord), Assembly Member Jimmy Gomez (D-Los Angeles) and Assembly Member Chris Holden (D-Pasadena), was amended in committee to authorize cities and counties to enforce any ordinance or zoning requirements relating to massage establishments, even if the same requirements do not apply to similar professional service providers. On June 23, 2014, AB 1147 was passed 8-0 by the Senate Business and Professions and Economic Development Committee. A hearing date before the Committee on Appropriations is set for August 11, 2014. Should the legislature pass the bill by the August 31 end of session deadline, the Governor will then have until September 30 to either sign the bill into law or veto it. If the bill is signed into law, it will take effect January 1, 2015.
- G. While following the status of proposed legislation (AB 1147) and the potential expiration of current legislation SB 731, it came to staff’s attention that the Duarte Municipal Code Chapter 5 requires physical facility and operational requirements for massage establishments that may not be uniformly applicable to other professional or personal service business in the City, which is potentially inconsistent with current State law. During the moratorium, City staff will compare existing municipal code language against current State law with greater scrutiny and will consider the potential effects of proposed AB 1147. The adoption of the moratorium is necessary to ensure that

any new massage establishments do not become subject to regulations that may be in conflict with current State law.

H. According to the Duarte Public Safety Department, massage establishments require a higher level of scrutiny and enforcement, including inspections, to ensure compliance with state and local laws. Staff will consider both existing and proposed legislation for massage uses and consider the effects on current monitoring practices. There are currently five massage establishments operating with a City business license:

- 1163 Huntington Drive (near NWC of Huntington Dr. and Buena Vista St.)
- 1740 Huntington Drive # 310 (SWC Huntington Dr. and Highland Ave.)
- 1802 Huntington "D" (SEC Huntington Dr. and Highland Ave.)
- 2138 Huntington Drive (SEC Huntington Dr. and Elmhurst Ave.)
- 2163 Huntington Drive, (mid-block b/w Mt. Olive Dr. and Bradbourne Ave.)

I. Public Safety personnel continually monitor these businesses and advertisements on the web suggest that illegal activities may be taking place at some of these locations. On July 15, 2014, staff completed a web search using the search terms "Duarte massage" and the search results listed three Duarte massage locations under the heading "Duarte Massage Parlors – Erotic massage parlor reviews" which linked to the website www.rubmaps.com, a website known to list reviews for illicit massage parlors.

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 to ensure that the Duarte Municipal Code is consistent with State law. During the moratorium period, staff intends to: (1) study current permit requirements that may be in conflict with SB 731; and (2) study potential effects of AB 1147 or continuation of SB 731 to ensure that the City had adequate code language to legally regulate or license massage establishments starting January 1, 2015.

K. A city, pursuant to Government Code Sections 36934, 36937, and 65858, may adopt an urgency ordinance to impose a moratorium as an interim measure for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the legislative body, planning commission, or city planning department is considering or intends to study within a reasonable time.

L. On July 8, 2014, the Duarte City Council, pursuant to Government Code 65858, adopted Ordinance No. 850 that established moratorium on the establishing, locating, or operating new massage establishments and granting or issuing of any zoning clearance, license, or permit in the city with respect thereto. In Ordinance 850, City Council found and determined as follows: (A) "there is a current and immediate threat to the public health, safety, or welfare, and to ensure that the Duarte Municipal Code is consistent with State law" and (B) during the moratorium period, staff intends to: (1) study current permit requirements that may be in conflict with SB 731; and (2) study potential effects of AB 1147 or continuation of SB 731 to ensure that the City had adequate code language to legally regulate or license massage establishments starting January 1, 2015."

M. The moratorium imposed by Ordinance No. 850 runs from the effective date of this Ordinance and continues for a period of the earlier of (A) forty-five (45) days (unless extended pursuant to Government Code Section 65858), or (B) until such time as the City Council adopts an ordinance amending the Municipal and/or Development Codes to address massage establishments. The City Council has not yet adopted an ordinance amending the zoning code to address these issues.

N. The moratorium established by adoption of Ordinance No. 850 will expire on its own terms on August 21, 2014. Government Code 65858 authorizes the extension of an urgency moratorium by adoption, after a public hearing, of another urgency ordinance to prohibit uses of land which may conflict with a contemplated zoning proposal which the legislative body, planning commission, or planning department is considering or studying, or intends to study, within a reasonable time.

O. On July 22, 2014, a date that is at least ten (10) days prior to the expiration of Ordinance 850, and prior to consideration of this Ordinance, the City Council timely approved, adopted, and issued the Report required by Government Code 65858(d) describing the measures taken to alleviate the condition which led to the adoption of Ordinance No. 850.

P. As set forth in Government Code Section 65858(d) Report, the Planning Division of the Community Development has reviewed the Development Code and has identified the need for additional review and analysis of land use regulations pertaining to massage establishments, and the need for additional review and analysis of the need to amend the Development Code pertaining to regulation of massage establishments, and that the extension to the moratorium is needed to complete the tasks identified in the Section 65858(d) Report.

Q. On August 12, 2014, the City Council held a duly noticed public hearing concerning this proposed urgency Ordinance to extend the moratorium established by Ordinance No. 850.

R. After consideration of all the information, evidence, and testimony presented at the public hearing held on August 12, 2014, the City Council finds that the current and immediate threat to the public health, safety, or welfare described in the findings adopted pursuant to Ordinance No. 850 still exists and it is therefore necessary to extend the moratorium as additional time is needed to address the current and immediate threat that prompted the moratorium adopted by Ordinance No. 850 and to complete the tasks set forth in the Section 65858(d) Report.

S. At least ten (10) days prior to the expiration of the moratorium as extended by this urgency Ordinance, the City Council shall review, approve, and issue a written report pursuant to Government Code 65858(d) describing the measures taken to alleviate the condition or conditions which led to the adoption of this urgency Ordinance.

SECTION 2. CEQA. The City Council finds and determines, for the reasons set forth in Section 1 hereof, that the adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") under State CEQA Guidelines Section 15060(c)(2), in that the adoption of this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment, and is further and independently exempt from the California Environmental Quality Act under State CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty there is no possibility the adoption of this Ordinance will have a significant effect on the environment.

SECTION 3. Imposition of Moratorium; Term of Moratorium Extension. The moratorium established by Ordinance No. 850 expires on August 21, 2014. Commending upon the expiration of Ordinance No. 850, i.e., August 21, 2014, the moratorium established by Ordinance No. 850 is hereby extended and shall continue for a period of the earlier of (A) ten months and fifteen days from and after the expiration of Ordinance No. 850, i.e., to and through July 7, 2015 (unless extended pursuant to Government Code Section 65858), or (B) until such time as the City Council adopts an ordinance amending the Municipal and/or Development Codes to address massage establishments. Until the expiration of the moratorium established hereunder (and as was established in Ordinance No. 850):

- (1) No new massage establishments, as that term is defined herein below, may be established, located, or operated within the City;
- (2) No business license, building permit, zoning clearance, or any other license or permit issued by the City shall be issued or granted for any: (a) new massage establishment, (b) expansion of an existing massage establishment; or (c) accessory massage use in a new or existing establishment.

As used herein, the term "massage establishment" shall have the same meaning as Duarte Development Code Section 19.160.140 (Definitions) and shall include professionals certified by the Massage Therapy Organization as defined by the Business and Professions Code section 4600 et seq. relating to the regulation of massage or massage services.

SECTION 4. Effective Date. This Ordinance is declared to be an urgency ordinance by authority conferred on the City Council of the City of Duarte by Government Code Sections 36934, 36937, and 65858, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision,

paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 6. Posting Of Ordinance. The City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner provided for in the Duarte Municipal Code.

PASSED, APPROVED, AND ADOPTED this 12th day of August, 2014.

/s/ Elizabeth Nowak Reilly
Mayor Elizabeth Nowak Reilly

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF DUARTE)

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Ordinance No. 851 was adopted by the City Council of the City of Duarte at a regular meeting of said Council held on the 12th day of August, 2014, by the following vote:

AYES: Councilmembers: Fasana, Finlay, Kang, Paras-Caracci, Reilly

NOES: Councilmembers: None

ABSENT: Councilmembers: None

/s/ Marla Akana
City Clerk Marla Akana
City of Duarte, California