

ORDINANCE NO. 2015-03

AN URGENCY ORDINANCE OF THE CITY OF EL CERRITO MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR RELOCATION OF NEW AND EXISTING MASSAGE ESTABLISHMENTS TO BECOME EFFECTIVE IMMEDIATELY

WHEREAS, the City of El Cerrito has an interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental, and economic values; and

WHEREAS, cities have traditionally had a high degree of local control related to local zoning and land use authority over massage establishments; and

WHEREAS, the California Legislature adopted Senate Bill 731, effective July 1, 2009, adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy ("Massage Therapy Act"); and

WHEREAS, the Massage Therapy Act placed limits on cities' regulation of massage establishments as it relates to business licensing, zoning, and health, safety, and welfare regulation; and

WHEREAS, cities throughout California have received numerous complaints regarding illicit activity, including prostitution, at massage establishments.

WHEREAS, the City values local business and recognizes that most massage establishments throughout the City are operated lawfully and professionally and staffed by massage therapists who uphold professional and community standards; and

WHEREAS, despite the lawfulness of most massage establishments, there is evidence to show that others serve as fronts for illegal activity that could potentially have negative secondary effects on commercial areas by creating or contributing to crime, calls for police service, code enforcement, and thereby creating an uninviting and potentially dangerous environment, which ultimately could adversely affect the City's economic vitality and ability to attract and retain businesses and shoppers to the City; and

WHEREAS, El Cerrito, consistent with the Massage Therapy Act, has no existing zoning regulations that address the location of California Massage Therapy Council ("CAMTC") certified massage establishments near potentially sensitive areas throughout the City; and

WHEREAS, the California Legislature recently passed Assembly Bill 1147, which is effective January 1, 2015, amending Section 460 of, and adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, and amending Section 51034 of the Government Code; and

WHEREAS, Assembly Bill 1147 will return land use authority over massage establishments to cities; and

WHEREAS, as applications from CAMTC certified massage establishments for business licenses are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance and unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and

WHEREAS, there is a threat to the public health, safety and welfare of the community if massage establishments locate in the City without proper regulations in place. Absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of massage establishments in locations within the City, without appropriate controls in place to regulate the impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Government Code Section 65858, subdivision (a) provides that the legislative body of a city may, to protect the public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal the City Council is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum of two times for a total duration of two years; and

WHEREAS, the City desires to address community concerns regarding the establishment and operation of massage establishments within the City and intends to (1) study the potential impacts massage establishments may have on the public health, safety and welfare, (2) determine what local regulations, including but not limited to zoning regulations, may be appropriate to limit the negative impacts of massage establishments, and (3) determine appropriate controls for the protection of public health, safety and welfare; and

WHEREAS, consistent with the return of local land use authority pursuant to Assembly Bill 1147, staff shall commence steps to conduct a study of the potential impacts of massage establishments, and possible amendments to the City's Municipal Code and Zoning Code for clear, consistent and uniform regulations related to the establishment, location and operation of such businesses; and

WHEREAS, the City will take steps to update its Municipal Code and Zoning Code to ensure that 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; and

WHEREAS, the City seeks a moratorium on the issuance of permits to massage establishments to provide the City time to study and plan its approach to massage regulation following the Governor's approval of Assembly Bill 1147; and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

NOW, THEREFORE, the City Council of the City of El Cerrito does ordain as follows:

Section 1. RECITALS MADE FINDINGS. The above recitals are hereby declared to be true and correct and findings of the City Council of the City of El Cerrito.

Section 2. MORATORIUM IMPOSED

A. Scope. For the purposes of this ordinance, "massage establishment" shall have the same meaning as in section 8.10.010 of the Municipal Code. In accordance with the authority granted the City of El Cerrito under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance:

1. No person, partnership, corporation, or other entity shall commence doing business as, or operations of, a massage establishment, nor shall a business license or operator's permit be issued to a massage establishment owner unless specifically excluded herein.

2. No building permit shall be issued pursuant to Title 16 of the El Cerrito Municipal Code for the construction of a new building or the modification of an existing building for use as a massage establishment.

3. If a business license or permit to operate has been issued but the business has not yet initiated operation prior to the effective date of this ordinance, then the business may seek a refund for business license tax paid.

B. Exceptions. This moratorium shall not prohibit the following: 1) the renewal of a business license for an existing massage establishment provided that the renewal seeks to maintain the massage establishment in its current location, and 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) massage establishments operated as home occupations in accordance with the El Cerrito Municipal Code; 3) the issuance of permits for emergency or emergency-related repairs; and 4) persons engaged as follows: (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 schools, and (d) trainers of amateur, semi-professional or professional athletes or athletic teams while engaged in their training responsibilities for and with athletes, and trains working in conjunction with a specific athletic event.

C. Statutory Findings and Purpose. This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council as set forth in the recitals incorporated by Section 1 of this ordinance, and the additional information set forth below:

1. The purpose of this ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by the establishment or relocation of new and existing massage establishments within the City of El Cerrito, in light of the State Legislature's recent passage of Assembly Bill 1147 which reinstates significant local control over massage establishments to local jurisdictions, until such reasonable time as a detailed study of the possible adverse impacts such establishments might have on commercial and residential uses and the general public health, safety, and welfare. The facts constituting the urgency are: a) Cities throughout California, including neighboring cities, have received complaints regarding illicit activity occurring at massage establishments; b) there are no existing regulations within the City of El Cerrito that address the location of California Massage Therapy Council ("CAMTC") certified massage establishments, and massage operations, which are near potentially sensitive areas throughout the City; c) such locations can be particularly sensitive to potential harmful effects of massage establishments; d) as applications for business licenses are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance; e) unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and f) the State Legislature recently passed Assembly Bill 1147, which became law on January 1, 2015, and which changes the state statutory structure for local regulation of massage establishments and practitioners.

2. Absent the adoption of this urgency ordinance, the establishment and operation of massage establishments in the City would result in the harmful secondary effects identified above.

3. It is necessary to study the possible adoption of amendments to the City's Municipal Code and Zoning Code in order to adopt legislation pursuant to the return of local land use control over massage establishments authorized by Assembly Bill 1147.

4. Issuing business licenses or building permits for new or relocating massage

establishments prior to the completion of the City's study of the potential impact of such facilities poses a current and immediate threat to the public health, safety, and welfare.

5. In light of the harmful secondary effects associated with massage establishments and the current and immediate threat such secondary effects pose to the public health, safety and welfare, it is necessary, in accordance with Government Code Section 65858, to impose a moratorium on the issuance of entitlements for and the establishment or relocation of massage establishments in the City to provide time for the City Council to further evaluate and consider possible adoption of legislation, guidelines and/or policies as required to avert the potential impacts of massage establishments.

Section 3. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of El Cerrito hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. EFFECTIVE DATE AND DURATION. This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 45 days therefrom unless extended by the City in accordance with California Government Code Section 65858.

The foregoing ordinance was introduced, adopted, and ordered posted at a meeting of the City Council for the City of El Cerrito held on the 17th of February, 2015 by the following vote:

AYES:	Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman
NOES:	None
ABSTAIN:	None
ABSENT:	None

APPROVED:

Mark Friedman, Mayor

ATTEST:

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2015–03 of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 17th day of February, 2015; and that said Ordinance has been submitted for publication and posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this
19th day of February, 2015.

Cheryl Morse, City Clerk