

URGENCY ORDINANCE NO. 2853

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF EL MONTE, COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA, EXTENDING THE PROVISIONS
OF ORDINANCE NO. 2850 MAKING FINDINGS AND
EXTENDING A TEMPORARY MORATORIUM ON THE
ESTABLISHMENT OF NEW MASSAGE ESTABLISHMENTS
AND THE EXPANSION AND/OR RELOCATION OF
EXISTING MASSAGE ESTABLISHMENTS FOR A PERIOD
OF TEN (10) MONTHS AND FIFTEEN (15) DAYS**

WHEREAS, pursuant to California Constitution Article XI, Section 7, the City of El Monte (the "City") has the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of the residents through its police power; and

WHEREAS, the City's police power provides the right to adopt and enforce zoning regulations; and

WHEREAS, in 2008, the California Legislature adopted Senate Bill 731 ("SB 731"), the Massage Therapy Act, which placed substantial limits on the City's ability to regulate business licensing, zoning, and health, safety, and welfare issues related to massage establishments in the City; and

WHEREAS, in response to SB 731, the City Council, on October 20, 2009, adopted a 45-day moratorium, under Urgency Ordinance No. 2747, on the approval of any business license, use permit, or any applicable application related to massage establishments, and/or massage practitioners, pursuant to Government Code Section 65858; and

WHEREAS, on November 17, 2009, the City Council adopted Urgency Ordinance No. 2748, to extend such moratorium for an additional ten (10) months and fifteen (15) days, pursuant to Government Code Section 65858; and

WHEREAS, the City Council adopted Urgency Ordinance No. 2761 on October 19, 2010 extending such moratorium for an additional duration of one (1) year, pursuant to Government Code Section 65858; and

WHEREAS, the City Council adopted Ordinance No. 2779 on October 18, 2011 amending Chapter 5.56 of the El Monte Municipal Code (the "EMMC") to implement changes mandated under SB 731; and

WHEREAS, SB 731's loosening of cities' regulatory authority led to the proliferation of massage establishments throughout the City and California, as well as instances of prostitution and other illicit activities in such establishments; and

WHEREAS, due to such proliferation, on September 18, 2014, Governor Brown signed Assembly Bill 1147 ("AB 1147"), which returns certain additional regulatory authority to regulate massage establishments to cities; and

WHEREAS, AB 1147's author, Assemblywoman Susan Bonilla, described AB 1147 as "the solution which will help eliminate human trafficking and prostitution in California's massage therapy establishments"; and

WHEREAS, AB 1147, authorizes cities and counties to enforce their zoning requirements on massage establishments under certain restrictions; and

WHEREAS, pursuant to Government Code Section 65868(a), the, the City Council adopted Interim Urgency Ordinance No. 2850 on February 24, 2015, to establish a temporary moratorium on the establishment of new massage establishments an the expansion and/or relocation of existing massage establishments; and

WHEREAS, under Government Code Section 65868(a), Interim Urgency Ordinance No. 2850 expires within forty-five (45) days of adoption (April 10, 2015), but allows the City to extend the moratorium for an additional period of ten (10) months and fifteen (15) days; and

WHEREAS, the City Council wishes to extend the existing moratorium established under Interim Urgency Ordinance No. 2850, from the April 10, 2015, initial expiration date, for a period of ten (10) months and fifteen (15) days; and

WHEREAS, the City shall take steps to update EMMC Chapter 5.56 to ensure that it is consistent with the goals, policies, and standards of the General Plan and state law, including AB 1147.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The recitals above are true and correct and incorporated herein by reference.

SECTION 2. Definitions. The meanings of "massage establishment," "massage establishment certificate," and "operator permit," shall be those meanings set forth in EMMC Section 5.56.020.

SECTION 3. Moratorium.

- A. In accordance with Government Code Section 65858 and, as initially adopted under Interim Urgency Ordinance No. 2850, no new massage establishment shall be established, constructed, or permitted in the City. The transfer of a massage establishment from one person or entity to another person or entity shall constitute the establishment of a new massage establishment.
- B. The City shall not grant a massage establishment certificate, operator permit, business license, business permit, or certificate of occupancy to a new massage establishment.
- C. No existing massage establishment in the City shall be expanded, whether by means of additional space, the construction of a new facility, or by reconfiguration.

SECTION 4. Purpose. This Urgency Ordinance is adopted as an urgency measure pursuant to Government Code Section 65858 and is for the immediate preservation of the public health, safety, and welfare. This Urgency Ordinance is deemed necessary based upon the recitals set forth above and for the following reasons:

- A. In light of the passage of AB 1147, which reinstates certain local control over massage establishments, this Urgency Ordinance will afford Planning staff and the Planning Commission a reasonable amount of time to study the potential criminal and nuisance activities that certain massage establishments have engaged in the City and how it can utilize AB 1147 to address such activities.
- B. A comprehensive set of regulations cannot be enacted without due deliberation and study, and it will take an indeterminate length of time to work out the details of such comprehensive regulations. Issuing licenses, permits or other entitlements prior to the completion of the City's study of such establishments poses a current and immediate threat to the public health, safety, and welfare by enabling parties to evade the operation of potential restrictions, thus defeating in whole or in part the ultimate objective of those restrictions.
- C. The revision of EMMC Chapter 5.56 in light of AB 1147 will best protect the public health, safety, and welfare by combatting the deleterious effects seen from the proliferation of massage establishments since SB 731.

- D. A comprehensive revision to EMMC Chapter 5.56 requires study, public hearings, and both Planning Commission and City Council review. Such revision cannot be formulated and enacted without due deliberation, which can only be afforded through this Urgency Ordinance.
- E. On the basis of the foregoing findings, all evidence on the record, including, but not limited to the concomitant report from staff, the City Council finds that this moratorium is justified under Government Code Section 65858.

SECTION 5. CEQA. This Urgency Ordinance is exempt from the California Environmental Quality Act ("CEQA") based on the following findings:

- A. This Urgency Ordinance is not a "project" within the meaning of Section 15061(b)(3) of the CEQA Guidelines as it has no potential for resulting in a physical change in the environment, either directly or indirectly.
- B. This Urgency Ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines, as it is a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858, to assure the maintenance and protection of the environment and adoption of contemplated local legislation, regulation, and policies.
- C. This Urgency Ordinance is not subject to CEQA under the general rule set forth in Section 15601(b)(3) of the CEQA Guidelines that CEQA only applies 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 Urgency Ordinance will have a significant effect on the environment.

SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Urgency Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

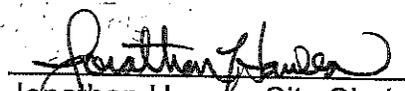
SECTION 7. Effective Date. This Urgency Ordinance shall become effective immediately upon adoption, if adopted by at least four-fifths (4/5) vote of the City Council, and shall be in effect for a period of ten (10) months and fifteen (15) days from the end of the initial 45-day moratorium period established under Interim Urgency Ordinance No. 2850 through February 25, 2016, unless extended by the City Council as provided for in the Government Code 65858..

PASSED, APPROVED AND ADOPTED by the City Council of the City of El Monte at the regular meeting of this 7th day of April, 2015.



André Quintero, Mayor
City of El Monte

ATTEST:



Jonathan Hawes, City Clerk
City of El Monte

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF EL MONTE)

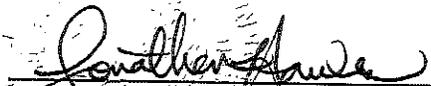
I, Jonathan Hawes, City Clerk of the City of EL Monte, hereby certify that the foregoing Urgency Ordinance No. 2853 was passed and adopted by the City Council of the City of El Monte, signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on the 7th day of April, 2015 and that said Urgency Ordinance was adopted by the following vote, to-wit:

AYES: Mayor Quintero, Mayor Pro Tem Patel, Councilmembers Gomez, Macias and Martinez

NOES: None

ABSTAIN: None

ABSENT: None



Jonathan Hawes, City Clerk
City of El Monte