

ORDINANCE NO. 1159

AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS ESTABLISHING A TEMPORARY MORATORIUM ON MASSAGE ESTABLISHMENTS

WHEREAS, Article 11, Section 7 of the California Constitution authorizes the City of Los Banos ("City") to make and enforce within its limits all ordinances and regulations not in conflict with general laws; and

WHEREAS, in 2009, the Legislature passed Senate Bill 731 (Business and Professions Code section 4600 *et seq.*, "SB 731"), which created the California Massage Therapy Council ("CAMTC"), a new entity with regulatory authority over the certification of massage practitioners throughout the state. SB 731 created uniform standards for these practitioners through a voluntary certification process and also imposed limitations on the authority of cities to regulate and restrict massage establishments; and

WHEREAS, in 2011, the Legislature passed Assembly Bill 619 ("AB 619"), which further restricted cities' ability to regulate massage establishments. Under specified circumstances, SB 731, as amended by AB 619, preempted cities and counties from imposing many land use controls pertaining to the regulation of massage establishments by transferring the local regulation of massage establishments and massage practitioners to CAMTC; and

WHEREAS, Senate Bill 731, and Assembly Bill 619 effectively ended most local regulation of massage establishments concerning business licenses, zoning, and health, safety and welfare regulations; and

WHEREAS, since the enactment of SB 731 and AB 619, many jurisdictions throughout the state have seen an increase in the number of massage establishments as a whole, as well as increases in illicit establishments which engage in prostitution and sex trafficking. The increase in such illicit activity has been found to be largely due to the requirement that massage establishments not be regulated more strictly than other land uses that provide professional services, in addition to inadequacies in CAMTC's certification criteria and enforcement practices; and

WHEREAS, the presence of massage establishments that engage in illicit activities changes the character of neighborhoods, causes blight, and impacts the local economy, as legitimate businesses refuse to operate or locate next to or near such illicit uses. Moreover, these establishments threaten the public health, safety, and welfare in that they operate as fronts for prostitution and potential sex trafficking operations; and

WHEREAS, the Legislature passed Assembly Bill 1147 ("AB 1147"), which went into effect on January 1, 2015, in response to widespread criticism of SB 731 and AB 619; and

WHEREAS, AB 1147 restored significant local land use authority over massage establishments by removing SB 731's provisions preempting local massage regulations and giving cities and counties greater authority to impose reasonable regulations on massage establishments; and

WHEREAS, the City Council is concerned about the public health and safety issues associated with massage establishments, including the illicit activity alleged to occur at massage establishments in the City of Los Banos, and desires to adopt ordinances that combat those health and safety risks; and

WHEREAS, due to the significant changes to the law as a result of AB 1147 and the restored powers of the City to adopt land use regulations applicable to massage

establishments, the City Council 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, pursuant to Government Code Sections 36937 and 65858, the City Council may adopt an interim urgency ordinance to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances; and

WHEREAS, City staff requires time to gather data about the adverse impacts of massage establishments and to research, study, and consider ways to possibly amend the City's regulatory process and the Los Banos Municipal Code to reduce potential illegalities occurring at massage establishments; and

WHEREAS, City staff, the Police Department, and the City Attorney's office are conducting research into the possible and likely impacts of further regulating massage establishments in the City in order to mitigate adverse impacts; and

WHEREAS, as a result, the City Council desires to institute a forty-five (45) day moratorium to allow staff and the City Council the opportunity to research and select the best course of action for the City's citizens and the community at large; and

WHEREAS, the City values local business and recognizes that many massage establishments throughout the City are operated lawfully and professionally, and staffed by massage therapists who uphold professional and community standards, and provide important health benefits to City residents; and

WHEREAS, the continued creation and operation of new massage establishments within the City prior to completion of such a study and possible adoption of newer amended regulations creates a current and immediate threat to the public safety, health and welfare in that such operations threaten to cause adverse impacts to surrounding residents and businesses, including impacts on or related to over-concentration of massage establishments in one area, violence against women, human trafficking, noise, outdoor lighting, sanitation, vehicle and pedestrian traffic, and property values; and

WHEREAS, for the reasons set forth above, the City has determined that a forty-five (45) day moratorium on the establishment of new, and the relocation or expansion of existing massage establishments within the City is necessary. The moratorium should remain in effect pending completion of the City's study of the potential impacts of massage establishments and its potential adoption of amendments to the Zoning Code and other appropriate regulations for the protection of the public health, safety and welfare; 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 Los Banos does hereby ordain as follows:

SECTION 1. FINDINGS. The above recitals are true and correct, and are adopted as findings of the City Council of the City of Los Banos.

SECTION 2. PURPOSE. The purpose of this Ordinance is to protect the public safety, health and welfare from the immediate threat posed by the establishment of new and the relocation of existing massage establishments by temporarily prohibiting the establishment of new and the relocation or expansion of existing massage establishments with the City of Los Banos until such time as a detailed study of the possible adverse impacts such establishments might have on commercial uses and the general health, safety and welfare may be made, and appropriate regulations enacted. This Ordinance is an interim Ordinance pursuant to Government Code section 65858 and adopted based on the recitals above, staff report and public testimony received on the City Council of November 1, 2017.

SECTION 3. MORATORIUM IMPOSED.

A. For the purpose of this Ordinance:

“Massage establishment” shall mean any business or establishment that offers massage or massage therapy in exchange for compensation at a fixed place of business. Any business or establishment that offers any combination of massage or massage therapy and bath facilities including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs shall be deemed a massage establishment under this Ordinance. Any business or establishment that offers massage or massage therapy as accessory to the principal permitted use, such as aromatherapy or a day spa.

“Massage,” “massage therapy,” shall mean the application of touch, including, but not limited to, pressure, stroking, kneading, tapping, pounding, stimulating, compression on or movement of the external parts of the human body with the hands or other parts of the body or with the aid of any mechanical or electrical apparatus or other appliances or devices with or without the use of rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

B. In accordance with the authority granted the City of Los Banos under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this Ordinance, no license, permit or other entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved or issued by the City for the establishment, relocation or expansion of a massage establishment. Additionally, the establishment, relocation or expansion of massage establishments is hereby expressly prohibited in all areas and zoning districts of the City.

C. This Ordinance shall not prohibit the renewal of a business license for an existing massage establishment, provided that the renewal seeks to maintain the business without expansion and 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.

D. This Ordinance shall not apply to the following classes of individuals while engaged in the performance of their duties:

1. Physicians, surgeons, nurses, chiropractors, osteopaths, acupuncturists, podiatrists, physical therapists, or any other persons licensed to practice any hearing art under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code. Persons operating or employed at hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the state.

2. Trainers of any amateur, semi-professional or professional athlete or athletic team, so long as such persons' practice of massage is limited to such athletes and athletic teams.

3. Barbers, cosmetologists, or estheticians who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses. Persons operating or employed at athletic clubs or fitness facilities, where massage services are provided to members of such facilities.

4. Enrolled students of a school of massage when they are performing massage within the City as part of a formal supervised internship or training operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate in the City.

SECTION 4. VIOLATION. Except as otherwise permitted under this Ordinance, the establishment, relocation or expansion of a massage establishment within the limits of the City of Los Banos is declared to be a public nuisance. Violations of this Ordinance may be enforced by any applicable laws or ordinances, including, but not limited to, injunctions or administrative or criminal penalties under Los Banos Municipal Code.

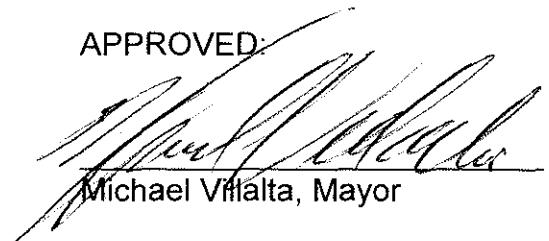
SECTION 5. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Los Banos 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 6. EFFECTIVE DATE AND DURATION. This Ordinance is an interim Ordinance pursuant to Government Code section 65858. It 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 forty-five (45) days therefrom unless extended by the City Council in accordance with Government Code section 65858.

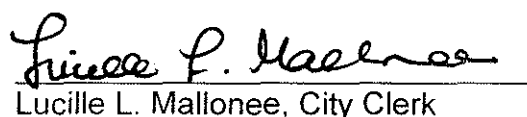
The foregoing ordinance was adopted with the reading waived at a regular meeting of the Los Banos City Council on November 1, 2017 by the following vote:

AYES: Council Members Faria, Johnson-Santos, Lewis, Silveira,
Mayor Villalta
NOES: None
ABSENT: None

APPROVED:


Michael Villalta, Mayor

ATTEST:


Lucille L. Mallonee, City Clerk