

ORDINANCE NO. 872-A

AN INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CUCAMONGA, EXTENDING INTERIM ORDINANCE NO. 872, REQUIRING A CONDITIONAL USE PERMIT FOR THE ESTABLISHMENT OF NEW MASSAGE ESTABLISHMENTS IN ALL ZONES IN WHICH SUCH USES ARE PERMITTED BY THE DEVELOPMENT CODE, AND DECLARING THE URGENCY THEREOF.

A. Recitals.

- (i) On December 17, 2014, the City Council adopted Interim Ordinance No. 872, to conditionally permit new massage establishments in all zones in which the use is currently permitted by right, effective January 1, 2015.
- (ii) On January 21, 2015, the City Council conducted a duly noticed public hearing concerning the extension of Interim Ordinance No 872. Ten (10) days prior to the expiration of Ordinance No. 818, the City Council will issue a report as described in Government Code Section 65858(d).
- (iii) Pursuant to the authority set forth in Government Code Section 65858(a), it is the intent of the City Council in adopting this Interim Ordinance to extend Interim Ordinance No. 872 and to continue to conditionally permit new massage establishments in all zones in which the use is currently permitted by right for a period of 22 months and 15 days based on the findings set forth below.
- (iv) In 2008, the California State Legislature adopted, and the Governor signed into law, Senate Bill 731, which established uniform statewide regulations pertaining to massage therapy and massage establishments (Business and Professions Code Section 4600 *et seq.*) (hereinafter, the "Massage Therapy Law"). More specifically, the Massage Therapy Law created a statewide system for issuing massage worker permits and shifted government regulation from local governments to a new state entity known as the California Massage Therapy Council (hereinafter, the "CAMTC"). The Massage Therapy Law preempted most local land use, zoning and operational regulations relating to massage therapists and practitioners certified by the CAMTC and massage establishments that exclusively employ certified massage therapists and practitioners. The State Legislature adopted Assembly Bill 619 in 2011 and Senate Bill 1238 in 2012, which amended various provisions of the Massage Therapy Law to further limit local government authority to regulate massage.
- (v) On July 16, 2012, the City Council approved a comprehensive Development Code Amendment Update, which amended the Rancho Cucamonga Municipal Code (hereinafter, the "Code") to conform to the Massage Therapy Law. This Code Amendment permitted massage establishments "by-right" in all commercial zoning districts, as well as the Industrial Park zoning district and the General Industrial zoning district. Prior to this Code amendment, massage establishments were conditionally permitted in the General Commercial zoning district Citywide and within the Village Commercial zoning district of the Victoria Arbors Master Plan.

- (vi) Massage establishments have proliferated in the City since the Massage Therapy Law took effect. The City had seven massage establishments prior to the Massage Therapy Law. Since that time the number of massage establishments in the City has increased to forty-two—a 600 percent increase in less than three years. The proliferation of massage establishments in the City is due, in part, to the permissive zoning regulations required under the Massage Therapy Law. Although the City Council finds that most massage establishments currently operating in the City are law abiding, there is evidence in other jurisdictions that massage establishments serve as fronts for prostitution or human sex trafficking. The potential for criminal and unsafe activity at massage establishments is particularly concerning given that some massage establishments in the City are located within proximity to places where families congregate, such as restaurants and shopping areas.
- (vii) On September 18, 2014, Governor Brown signed into law Assembly Bill 1147 (hereinafter, “AB 1147”), which amended the Massage Therapy Law to expand local authority to adopt zoning regulations, business licensing, and reasonable health and safety requirements for massage establishments and practitioners. More specifically, the City may now adopt and enforce zoning regulations specific to massage establishments that do not necessarily apply to all other licensed professionals. AB 1147 took effect on January 1, 2015.
- (viii) The City’s Planning staff is presently studying AB 1147 and evaluating potential land use changes relating to massage establishments that are consistent with the Massage Therapy Law, as amended by AB 1147. Planning staff does not anticipate completing this study prior to the expiration date of the initial 45-day period covered by Interim Ordinance No. 872 and, therefore, requires additional time to complete the study. The Planning Department intends to complete this study within a reasonable time and the study will result in recommendations to the City Council regarding appropriate zoning districts, entitlement requirements, and operational regulations for new massage establishments.
- (ix) The proliferation of massage establishments in the City without due consideration through the approval of a Conditional Use Permit presents a current and immediate threat to the public health, safety, and welfare. This is so because evidence in other jurisdictions suggests that some massage establishments and massage professionals may be engaged in criminal and otherwise unsafe activities and, further, that massage establishments are frequently located near incompatible uses. Until the City Council can act to approve new land use regulations, the City Council desires Planning staff to review new massage establishments through the process of approving Conditional Use Permits.
- (x) The development of new massage establishments without Conditional Use Permits before the City has had a sufficient opportunity to fully study the current impacts and potential regulation of massage establishments would result in adverse impacts to City residents and business, constitute a nuisance to surrounding land uses, and present a threat to public health, safety, and welfare.

B. Ordinance.

NOW, THEREFORE, the City Council hereby ordains as follows:

Section 1. The City Council finds that the facts set forth in the Recitals, Part A, of this Ordinance are true and correct and, based on such facts and the entirety of the record before it, further finds as follows:

- a. The establishment and operation of any new massage establishments within the City without due consideration through the approval of a Conditional Use Permit and before the City has an opportunity to study current impacts and potential regulation would result in adverse impacts, constitute a nuisance, and present a risk to the public health, safety, and welfare.
- b. Requiring a Conditional Use Permit for new massage establishments in any zone in which such use is permitted is necessary to protect the public safety, health, and welfare.

Section 2. The City Council hereby extends the current interim zoning ordinance to conditionally permit new massage establishments in all zones in which massage establishments are currently permitted, as established by Interim Ordinance No 872. All persons desiring to establish a massage establishment in one of those zones must obtain a Conditional Use Permit pursuant to Section 17.16.120 of the Code. For purposes of this Ordinance, the term "massage establishment" shall mean any establishment, parlor, or any room, place or institution where customers can receive a massage on any portion of the body either as a primary or accessory function. The term "new" shall mean both 1) an increase in the existing, legally established building area in which an existing massage establishment conducts business (i.e., expansion); and 2) the establishment of a new massage establishment in a new location.

Section 3. This ordinance is additional to and supplemental to, and shall not affect, except as specifically provided herein, any provision of the Rancho Cucamonga Development Code, which shall be operative and remain in full force and effect without limitation.

Section 4. This ordinance shall take effect concurrent with the expiration of Interim Ordinance No. 872 at midnight on January 21, 2015, and shall remain in effect for a period of twenty two (22) months, fifteen (15) days in accordance with California Government Code Section 65858.

Section 5. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the zoning provisions established hereby, may have a significant effect on the environment, because the Ordinance will impose greater limitations on development in the City, and will thereby serve to eliminate potentially significant adverse environmental impacts. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations.

Section 6. Penalty. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period not to exceed six (6) months, or

by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance.

Section 7. Civil Remedies. The violation of any of the provisions of this Ordinance hereby adopted shall constitute a nuisance and may be abated by the City through civil process by means of restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances.

Section 8. Severability. The City Council declares that, should any provision, section, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Ordinance shall remain in full force and effect.

Section 9. The City Clerk shall certify to the adoption of this Ordinance.

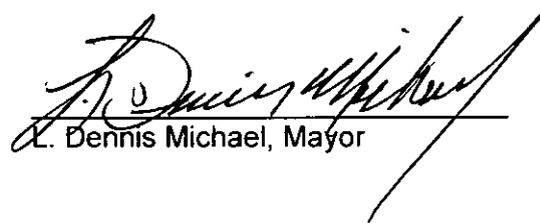
PASSED, APPROVED, AND ADOPTED this 21st day of January 2015.

AYES: Alexander, Kennedy, Michael, Spagnolo, Williams

NOES: None

ABSENT: None

ABSTAINED: None


L. Dennis Michael, Mayor

ATTEST:


Janice C. Reynolds, City Clerk

I, **JANICE C. REYNOLDS, CITY CLERK** of the City of Rancho Cucamonga, California, do hereby certify that the foregoing urgency Ordinance was adopted at a Regular Meeting of the Council of the City of Rancho Cucamonga held on the 21st day of January 2015.

Executed this 22nd day of January 2015, at Rancho Cucamonga, California.


Janice C. Reynolds, City Clerk