

ORDINANCE NO. 2014-\_\_\_\_\_

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF SAN MARCOS, CALIFORNIA, IMPOSING A TEMPORARY  
MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF  
MASSAGE ESTABLISHMENTS

The City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally, and by the Charter of the City of San Marcos specifically, and pursuant to Government Code Section 65858, does ordain as follows:

Section 1. Findings and Purpose. The City Council finds and declares that:

- (a) In 1988, the City added Chapter 5.44 to the San Marcos Municipal Code (“SMMC”) to provide for the orderly regulation of the massage business in the City of San Marcos; and
- (b) In September 2014, the Governor of California signed Assembly Bill (“AB”) 1147, which becomes effective on January 1, 2015. AB 1147 restores local government authority that had been restricted by the California Legislature’s passage of Senate Bill (“SB”) 731 in 2008 and by AB 619 in 2011, and allows cities and counties to regulate the massage business by adopting or enforcing local ordinances that govern zoning, business licensing, or reasonable health and safety requirements of massage establishments;
- (c) As an urgency measure to protect the public safety, health and welfare, California Government Code Section 65858 authorizes local governments to adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission, or planning department is considering, studying or intends to study within a reasonable time; and
- (d) It is necessary for the City to impose a temporary moratorium prohibiting the approval or issuance of any applicable license or entitlement for use, including but not limited to the issuance of a business license, massage establishment license, massage technician permit, massage technician trainee permit, building permit, conditional use permit, or other land use approval for the establishment or expansion of any massage establishment within the City’s jurisdictional boundaries to preserve the status quo while providing time for the City to study potential approaches and review possible amendments to the SMMC and the Zoning Ordinance consistent with the provisions of AB 1147.

Section 2. Temporary Moratorium Established. For the reasons described above, the City Council has determined it is necessary to enact an interim urgency ordinance imposing a temporary moratorium on the establishment or expansion of massage establishments pursuant to Government Code Section 65858. For purposes of this Ordinance, “massage establishment” shall have the same meaning as set forth in Section 5.54.040 of the SMMC.

The City has a compelling interest in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and integrity of its neighborhoods, and in providing clear local regulation consistent with the requirements of State law. The adoption of this Ordinance is necessary on an urgency basis for the immediate preservation of the public health, safety and welfare.

No permit or other applicable license or entitlement for use, including but not limited to the issuance of a business license, massage establishment license, massage technician permit, massage technician trainee permit, building permit, conditional use permit, or other land use approval, shall be approved and/or issued for the establishment and/or expansion of any massage establishment within the jurisdiction of the City.

This Ordinance shall not preclude the continued operation of any lawfully existing massage establishment that does not seek to expand, convert, relocate or otherwise change its use, or the opening of any massage establishment for which all discretionary and non-discretionary approvals have been made prior to the effective date of this Ordinance. Existing massage establishments that employ massage professionals certified by the California Massage Therapy Council (“CAMTC”) may only replace or exchange existing massage professionals with CAMTC-certified massage professionals to match the number of massage professionals employed by the massage establishment on the date this Ordinance becomes effective.

Section 3. Consistency with the SMMC. Any provision of the SMMC that is inconsistent with any provision of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified only to the extent necessary to effect the provisions of this Ordinance. For the pendency of this moratorium, all section of SMMC Chapter 5.54 relating to operating requirements for massage establishments and massage professionals shall remain in full force and effect.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it

would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 5. Effective Date. This Ordinance shall take effect immediately upon adoption as an urgency measure. The temporary moratorium shall be of no further force and effect forty five (45) days from the date of the adoption of this Ordinance, unless, prior to its expiration, following a noticed public hearing in accordance with Government Code Section 65090, the City Council extends the Ordinance pursuant to Government Code Section 65858.

Section 6. Publication. Within fifteen (15) days following the adoption of this Ordinance, the City Clerk shall certify to the passage of this Ordinance and cause the same to be published in accordance with the provisions of State Law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

PASSED, APPROVED AND ADOPTED at a special meeting of the City Council of the City of San Marcos held on the 10th day of November, 2014, by the following roll call vote:

AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:

APPROVED:

\_\_\_\_\_  
James M. Desmond, Mayor  
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Phillip Scollick, City Clerk  
City of San Marcos

\_\_\_\_\_  
Helen Holmes Peak, City Attorney  
City of San Marcos