



Legislation Text

File #: 16-318, **Version:** 2

An ORDINANCE of the City of San Leandro Amending San Leandro Municipal Code Chapter 4.23 “Massage and Acupuncture Establishments and Services” to Repeal Provisions Related to the Regulation of Acupuncturists and to Regulate the Operation of Massage Establishments; and to Repeal Related Temporary Moratorium Ordinance

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, California courts have affirmed the power of a city to regulate business activity in order to discourage violations of law in such cases as Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, Bravo Vending v. City of Rancho Mirage (1993) 16 Cal.App.4th 383, and Prime Gas v. City of Sacramento (2010) 184 Cal.App.4th 697; and

WHEREAS, local zoning controls allow local governments to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws; and

WHEREAS, the City of San Leandro 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 substantial limits on cities’ regulation of massage establishments as it relates to business licensing, zoning, and health, safety, and welfare regulation; and

WHEREAS, the California Legislature recently passed Assembly Bill 1147 which become 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 amended the Massage Therapy Act to return land use and

regulatory authority over massage establishments to cities; and

WHEREAS, in 2009, San Leandro had 11 establishments that provided massage services and now has approximately 45 establishments that provide massage services; and

WHEREAS, cities throughout California have received numerous complaints regarding illicit activity, including prostitution, at massage establishments. In San Leandro one massage establishment, with a history of multiple offenses for prostitution since 2011, was recently shut down as part of a county-wide sting operation and San Leandro Police uncovered prostitution activity at another massage establishment as part of a sting operation; and

WHEREAS, San Leandro, consistent with the Massage Therapy Act prior to Assembly Bill 1147, stopped enforcing existing zoning regulations that address the location of massage establishments near potentially sensitive areas throughout the City; and

WHEREAS, as applications for business licenses and massage permits 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, following changes in state law pursuant to Assembly Bill 1147, the City Council (1) intends to address community concerns regarding the establishment and operation of massage establishments, (2) has studied the potential impacts the massage establishments may have on the public health, safety and welfare, (3) has studied and determined the appropriate and necessary local regulations for massage establishments, (4) studied and determined the appropriate zoning and location for massage establishments, and (5) determined appropriate controls for protection of public health and welfare; and

WHEREAS, the City Council intends to continue the City's previous enforcement of existing zoning regulations that require massage establishments to obtain a conditional use permit to operate in throughout the City, and intends to regulate the operation of massage establishments; and

WHEREAS, the failure of massage establishments to comply with local and state laws, particularly laws prohibiting prostitution and other illicit activity, presents an imminent threat to the public health, safety, and welfare of the residents of the City; and

WHEREAS, San Leandro has a substantial interest in promoting compliance with state laws prohibiting prostitution and in promoting compliance with federal, state and local laws intended to discourage prostitution and other illicit activity; and

WHEREAS, the City Council adopted a temporary 45-day moratorium on the establishment and relocation of new and existing massage establishments through Ordinance 2014-019, which moratorium was extended through Ordinance 2014-022 and Ordinance 2015-012. The moratorium will expire on October 20, 2016 unless repealed before then; and

WHEREAS, the City currently regulates acupuncturists and acupuncture establishments; and

WHEREAS, the City does not desire to regulate acupuncturists and acupuncture

establishments which are regulated by state law; and

WHEREAS, the amendments to the Municipal Code propose to repeal and replace Chapter 4.23 in its entirety as shown in Exhibit A, which exhibits are attached and incorporated herein by reference.

Now, therefore, the City Council of the City of San Leandro does ordain as follows:

SECTION I. Recitals. The above recitals are true and correct and made a part of this ordinance.

SECTION II. CEQA. Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION III. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, repealing and replacing Chapter 4.23, as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION IV. Moratoria repealed. The temporary moratorium on the establishment and relocation of new and existing massage establishments, as established through Ordinance 2014-019, and extended through Ordinance 2014-022 and Ordinance 2015-012, is repealed as of the effective date of this Ordinance.

SECTION V. 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 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 VI. Publication and effective date. This Ordinance shall take effect thirty (30) days after adoption. The City Clerk of the City of San Leandro shall cause the Ordinance to be published in accordance with section 36933 of the Government Code of the State of California.

Introduced by Councilmember Prola on this 20th day of June, 2016, and passed to print by the following called vote:

Members of the Council:

AYES: Councilmembers Cox, Lee, Lopez, Prola, Reed, Thomas; Mayor Cutter (7)

NOES: None (0)

ABSENT: None (0)