

PLANNING COMMISSION AGENDA

CHAIRPERSON:

Liz Wynn



VICE CHAIRPERSON:

Chris Gomez

COMMISSIONERS: Liz Wynn, Chris Gomez, Brett Taylor, Marvin Hansen, Sarrah Peariso

MONDAY, OCTOBER 14, 2019; 7:00 P.M., COUNCIL CHAMBERS, 707 W. ACEQUIA, VISALIA CA

1. THE PLEDGE OF ALLEGIANCE –
2. CITIZEN'S COMMENTS – This is the time for citizens to comment on subject matters that are not on the agenda but are within the jurisdiction of the Visalia Planning Commission. The Commission requests that a 5-minute time limit be observed for comments. Please begin your comments by stating and spelling your name and city. Please note that issues raised under Citizen's Comments are informational only and the Commission will not take action at this time.
3. CHANGES OR COMMENTS TO THE AGENDA–
4. CONSENT CALENDAR - All items under the consent calendar are to be considered routine and will be enacted by one motion. For any discussion of an item on the consent calendar, it will be removed at the request of the Commission and made a part of the regular agenda.
 - Time Extension for Conditional Use Permit No. 2017-08
 - Time Extension for Houdini Acres Tentative Subdivision Map No. 5563 & Conditional Use Permit No. 2017-31
5. PUBLIC HEARING – Josh Dan
Tentative Parcel Map No. 2019-11: A request by Quad Knopf (QK) on behalf of Gary Smee to subdivide 0.38 acres into two parcels for residential use. The site is zoned R-1-5 (Single Family Residential, 5,000 sq. ft. minimum site area), located at 444 S. Church Street (APN: 097-062-009).The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Categorical Exemption No. 2019-52.
6. Work Session – Paul Bernal
 - Work Session Staff Report Regarding Massage Therapist
7. DIRECTOR'S REPORT/ PLANNING COMMISSION DISCUSSION-
 - Planning Commission Meeting October 28, 2019

The Planning Commission meeting may end no later than 11:00 P.M. Any unfinished business may be continued to a future date and time to be determined by the Commission at this meeting. The Planning Commission routinely visits the project sites listed on the agenda.

For Hearing Impaired – Call (559) 713-4900 (TTY) 48-hours in advance of the scheduled meeting time to request signing services.

Any written materials relating to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the City Office, 315 E. Acequia Visalia, CA 93291, during normal business hours.

APPEAL PROCEDURE

THE LAST DAY TO FILE AN APPEAL IS THURSDAY, OCTOBER 24, 2019 BEFORE 5 PM

According to the City of Visalia Zoning Ordinance Section 17.02.145 and Subdivision Ordinance Section 16.04.040, an appeal to the City Council may be submitted within ten days following the date of a decision by the Planning Commission. An appeal form with applicable fees shall be filed with the City Clerk at 220 N. Santa Fe, Visalia, CA 93292. The appeal shall specify errors or abuses of discretion by the Planning Commission, or decisions not supported by the evidence in the record. The appeal form can be found on the city's website www.visalia.city or from the City Clerk.

THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, OCTOBER 28, 2019

City of Visalia



To: Visalia Planning Commission
From: Paul Bernal, Interim Director/City Planner
Date: October 14, 2019
RE: **Work Session Staff Report Regarding Massage Therapist**

PURPOSE

The purpose of this Work Session staff report is to provide the Planning Commission an overview of the Zoning Ordinance and other Municipal Code requirements for Massage Therapist businesses, and to provide staff with direction on potential Zoning Ordinance changes.

BACKGROUND

The Planning Commission over the past year and half has entitled four massage therapist uses, with three of these business/uses being entitled over the past two months. During discussion among the Planning Commissioner's, several concerns have surfaced, including zoning requirements, hours of operation, and other City municipal code requirements that govern massage therapist uses.

Prior to the 2017 Comprehensive Zoning Ordinance update, Massage Therapist was included with "Barber, Hairstylists, Tanning Centers, Cosmeticians, Massage Therapist, & Day Spas" as a single line item.

This group of uses was "Permitted" in the following zones (*pre 2017 Zoning update*):

Convenience Commercial	Neighborhood Commercial	Shopping/Office Commercial
Community Commercial	Regional Retail Commercial	Central Business District (i.e., Downtown)
Service Commercial		

A Conditional Use Permit was required if a Massage Therapist use was located in the following zones:

Highway Commercial	Professional/Administrative Office	Office Conversion
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In addition, the pre-2017 Zoning Ordinance "Permitted" "Barber, Hairstylists, Tanning Centers, Cosmeticians, Massage Therapist, & Day Spas" uses in all commercial, office and industrial zones (with the exception of the Service Commercial and Office Conversion zones) if these uses were located with a Primary Permitted Use on the site. As an example, a large by-right office use could have an ancillary "Day Spa" in the Professional / Administrative Office zone (i.e., no CUP required) if the Day Spa use was associated with the primary office use.

2017 Zoning Ordinance Update

With adoption of the 2017 Zoning Ordinance update, the Massage Therapist use was listed as a stand-alone use rather than being combined with multiple uses as with prior zoning ordinance versions. Massage Therapist is also now listed under the “M” section next to the Medical Facilities/Services section of the Zoning Matrix.

The 2017 Zoning Ordinance update listed Massage Therapist as a “Conditionally Allowed” use in the following zones:

Neighborhood Commercial	Commercial Mixed Use	Downtown Mixed Use
Office / Professional Admin.	Office Conversion	

Conversely, Massage Therapist is listed as a “Permitted” use in the Regional Commercial zone.

CONDITIONAL USE PERMIT (CUP) PROCESS

As a result of the 2017 Zoning Ordinance update, Massage Therapist uses are now processed through the CUP process. Through this process, the Planning Commission exercises its discretionary authority to impose reasonable conditions on the granting of the CUP, or it can deny the application for the CUP. With the recent massage therapist uses that have been processed, the Planning Commission has applied its discretionary authority to condition revised hours of operation based on the business/use’s proximity to residential uses, or to achieve compatibility with adjacent land uses. However, the Planning Commission has also expressed concerns with how other provisions of the City’s Municipal Code are being enforced to ensure compliance with all laws/ordinances.

MESSAGE ESTABLISHMENTS (CHAPTER 5.68)

The City of Visalia adopted an Ordinance No. 2012-05 in 2012 to regulate massage establishments. Although this Chapter is not within the purview of the Planning Commission, the requirement for massage establishments to adhere to Chapter 5.68 (Massage Establishments) is required regardless if a CUP is required. However, all CUPs that have been approved by the Planning Commission contain the standard condition that requires applicants/business operators to comply with all City Ordinances, including all Federal, State, and local laws. This standard condition ensures that the applicant/business operator is complying with any additional requirements that are not governed under the Zoning Ordinance. In the case of a massage establishment, applicants/business operators are subject to the requirements of Chapter 5.68 of the Municipal Code.

Chapter 5.68 (Ordinance No. 2012-05), which is under Business Regulations of the Municipal Code, was adopted because the City of Visalia did not have an ordinance to regulate these establishments.

There are also several state laws that have been passed to encourage better training of massage establishment employees, and to provide basic health and safety regulations. Senate Bill (SB) 731 was approved in 2008 and Assembly Bill (AB) 619 in was approved 2011. These bills created centralized state licensing regulations for massage establishments, massage practitioners, and massage therapists.

These laws allowed cities to adopt an ordinance that requires the following:

1. Massage practitioners or massage therapists are required to hold a current certification issued by the California Massage Therapy Council (CMTCC).
2. Requires all applicants for a business license to operate a massage establishment, who have not been certified by the CAMTC and who own more than five percent interest in the proposed establishment, to fill out an application providing relevant information required to conduct a background check and make possible reasonable investigation into the information provided.
3. May deny or restrict a business license if the applicant has provided materially false information.
4. Enforce health and safety regulations that are generally applicable to other professional services and impose a business license fee generally applicable to other professional services.

SB 731 and AB 619 also limit what cities can do in regulating massage establishments. Cities cannot establish a separate license or permitting process. Cities also cannot apply land use and zoning requirements applicable to massage establishments that are not equally and uniformly applied to other professional or personal service businesses such as law and accountant offices, chiropractors, acupuncturists, beauty salons and barber shops. Additionally, the local building codes cannot require additional restrooms, showers or other facilities that are not uniformly applicable to other professional and personal service businesses.

In addition to SB 731 and AB 619, the State recently passed a new law (AB 775) calling for future regulation on massage schools and potential denial of schools.

AB 775 requires CMTCC to establish specified timelines for the approval of schools, including requiring the CMTCC to approve a school, propose to deny approval of a school, or notify the school that corrective action is required on or before one year from the date the CMTCC receives an initial application. The bill also addresses the following:

1. Would authorize a school to appeal the CMTCC's final decision to deny approval of the school and would require the CMTCC to hear the appeal within a specified time period.
2. Would require the CMTCC to note on its internet website the date that a letter proposing to deny a school's application for approval or re-approval or requesting corrective action has been sent to the school and the final outcome of the proposed action, as specified.
3. Would require a school offering a professional massage therapy program that has not been approved by the CMTCC to notify, and obtain a signed confirmation from, each

student that the student has been notified that the school is not approved by the CMTC and that education completed at the school cannot be used to satisfy any of the requirements for certification as a massage therapist or massage practitioner in California.

The ordinance adopted in 2012 follows State law requirements, requires reasonable health and safety provisions and established a background check procedures to operate a massage establishment in the City of Visalia. With the passage of AB 775, staff will review the current ordinance to ensure that any applicable changes are correctly referenced.

NEIGHBORHOOD PRESERVATION & CONDITIONAL USE PERMIT REVOCATION PROCESS

The Neighborhood Preservation Division is the enforcement division for the City when complaints are received that a business is operating in violation of local City ordinances and/or is conducting activity resulting in nuisance complaints. When violations are reported, the Code Enforcement Officer will conduct a site visit to verify the complaint, and if found that violations and/or improper activity are occurring at the business, the Code Enforcement Officer will issue a notice to correct the violation. Failure to comply with the notice will result in additional citations, including fines. If the business and/or use were approved through the CUP process, the City could seek to revoke the CUP if the business/operator continues to operate in non-compliance.

The City of Visalia has the authority to automatically suspend a CUP for failure to comply with the condition(s) of the permit. Pursuant to Visalia Municipal Code Section 17.38.040, a failure by the owner/operator to comply with the conditions of project approval will result in the City issuing a notice to the operator of the violation and that the business/use shall bring their business/use into compliance. Failure to bring the business/use into compliance will result in the City issuing a "Notice of Conditional Use Permit Suspension Order to Cease and Desist".

Upon suspending a CUP the Planning Commission shall hold a public hearing within 60 days, in accordance with the Public Hearing Notice procedures, and if not satisfied that the regulations, general provisions, or conditions are being complied with, may revoke the permit, or take action as may be necessary to ensure compliance with the regulations, general provisions, or condition(s).

Conversely, if a complaint is received and it is determined that the violation is a criminal violation, staff immediately gets the Visalia Police Department involved to resolve the violation. In some cases, if the violation results in the commercial building space being unsafe to occupy, the Code Enforcement Officer will post the building/site with an order to cease all operations and remain closed until the matter is resolved and referred to the Police Department for a criminal investigation.

PLANNING COMMISSION CONSIDERATION

Based on the changes to the Massage Therapist use as a result of the 2017 Zoning Ordinance update, the Planning Commission may consider directing staff to initiate a Zone Text Amendment (ZTA) to change Massage Therapist from a "Permitted" use to a "Conditionally Permitted" use in the Regional Commercial zone. This would establish the CUP requirement for a Massage Therapist in the Regional Commercial zone similar to other medical related uses (i.e., chiropractor, dental, medical, and clinic) that all require a CUP in the Regional Commercial zone.

Attachments:

1. Section 17.25.030 Section "M" of the Zone Matrix Table
2. Chapter 5.68 Massage Establishments
3. AB 775

Print

Visalia, CA Municipal Code

Chapter 5.68 MASSAGE ESTABLISHMENTS

Sections:

- 5.68.010 Declaration of purpose and intent.
- 5.68.020 Definitions.
- 5.68.030 Administration.
- 5.68.040 Certifications required.
- 5.68.050 Massage establishment owner background check required.
- 5.68.060 Additional requirements.
- 5.68.070 Display of permit.
- 5.68.080 Massage establishment—Massage technician certificates required.
- 5.68.090 Prohibited conduct.
- 5.68.100 Facilities and operations.
- 5.68.110 Exceptions.
- 5.68.120 Public nuisance abatement.
- 5.68.130 Revocation.
- 5.68.140 Enforcement and penalties.
- 5.68.150 Appeal.

5.68.010 Declaration of purpose and intent.

A. This chapter establishes permitting standards intended to comply with California law and establish health and safety guidelines for massage establishments.

B. This chapter is not intended to be exclusive and compliance will not excuse noncompliance with any state or local laws or regulations that are uniformly applied to other professional or personal services businesses including, without limitation, all zoning applications; business license regulations; building, fire, electrical, and plumbing codes; and health and safety code laws and regulations applicable to professional or personal services businesses.

C. This chapter establishes a local regulatory system that allows only state certified massage therapists and massage practitioners to operate within the city. This chapter is not intended to regulate massages that are not part of a business occupation. This chapter is also intended to allow a transitional period for certain existing massage practitioners to continue practicing while they obtain state certification before December 31, 2013, and to coordinate the timing of the city's business license renewals with the state massage certification process.

(Ord. 2012-05 § 2 (part), 2012)

5.68.020 Definitions.

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this chapter. Words and phrases not defined by this chapter have the meaning set forth elsewhere in the Visalia Municipal Code, the California Business and Professions Code, or the California Government Code.

"California Massage Therapy Council (CAMTC)" means the California Massage Therapy Council created pursuant to California Business and Professions Code § 4500.5(a).

"Certified massage practitioner" means a person who is currently certified as a massage practitioner by the CAMTC, and who administers massage for compensation.

"Certified massage therapist" means a person who is currently certified as a massage therapist by the CAMTC, and who administers massage for compensation.

"City" means the city of Visalia.

"Police chief" means the police chief of the city of Visalia or the authorized representatives thereof.

"Massage" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations. (Exclusions to this chapter are also described in Section 5.68.110. This chapter is not intended to regulate massages that not part of a business occupation.)

"Massage establishment" means and includes any business enterprise or establishment, parlor, or any room, place or institution within a business establishment where massage is given or administered by a massage technician as a paid service.

"Massage technician" means any person, who gives, performs or administers to another person a massage for any form of consideration.

"Out-call massage service" means any business that provides, refers or otherwise facilitates massage for any consideration at a nonfixed location.

"Person" means and includes person(s), firms, corporations, partnerships, associations or other forms of business organization or group.

"Recognized school" means a school of massage, recognized by the state of California which: (i) teaches the theory, ethics, practice, profession and work of massage; and (ii) requires a residence course of study to be given and completed before the student is furnished with a diploma or certificate of learning or completion; and (iii) has been approved by the state of California Consumer Affairs Bureau pursuant to Education Code § 94915, or, if said school is not located in California, has complied with the standards commensurate with those specified in said § 94915, or a school of equal or greater training that is approved by the corresponding agency in another state, or accredited by an agency recognized by the United States Department of Education.

"Specified anatomical areas" means and includes any of the following human anatomical areas: genitals, pubic regions, anuses or female breasts below a point immediately above the top of the areola.

"Specified sexual activities" means and includes all of the following:

- A. Fondling or other erotic touching of specified anatomical areas;
- B. Sex acts including, without limitation, intercourse, oral copulation, or sodomy;
- C. Masturbation; or
- D. Excretory functions as part of or in connection with any specified sexual activity listed in this definition.

"Unrecognized school" means any school of massage that does not meet the definition of "recognized school" but teaches or purports to teach the theory, ethics, practice, profession or work of massage.

(Ord. 2012-05 § 2 (part), 2012)

5.68.030 Administration.

The chief of police is authorized to administer this chapter and to promulgate administrative policies and procedures required to implement the regulations set forth in this chapter.

(Ord. 2012-05 § 2 (part), 2012)

5.68.040 Certifications required.

A. Massage establishment. It is unlawful for any person to own, operate or maintain a massage establishment unless all massage technicians employed by the massage establishment hold a current, valid certification from the CAMTC as a massage practitioner or massage therapist or qualify under the limited exceptions described in this chapter.

B. **Massage technician.** It is unlawful for any person to engage in, or carry on, the business or activities of a massage technician without a certification from the CAMTC as a massage practitioner or massage therapist or qualify under the limited exceptions described in this chapter.

C. **Out-call massage service.** It is unlawful for any person to own, operate, or maintain, an off-premise massage service in the city unless all massage technicians employed by the off-premises massage service hold a current, valid certification from the CAMTC as a certified massage practitioner or certified massage therapist or qualify under the limited exceptions described in this chapter.

D. The city recognizes that some massage therapists and massage practitioners currently practicing in Visalia may not meet the current requirements set forth by the CAMTC due to changes in educational or other requirements particularly changes in requirements concerning hours of schooling although the person has been in practice for a significant period. The city will therefore allow such persons that were working within Visalia prior to the passage of this chapter under this "grandfather exception" without certification from the CAMTC if the requirements stated below are met.

The person seeking this exemption must show to the satisfaction of the city police department that he or she worked as a massage therapist or massage practitioner in the city prior to July 1, 2012, which is after the effective date of this chapter. The person must also provide evidence to the city that he or she has certification or proof of training in the field from a school or another entity comparable to the CAMTC and has been working as a massage therapist or massage practitioner for a period of at least five (5) years. Finally, the person must provide evidence that they attempted to obtain certification from the CAMTC but were denied and provide the reasons for the denial to show despite their existing training and experience they were not able to qualify for certification from CAMTC.

Persons that are granted an exemption from the CAMTC certification requirement by the city will still be required to meet all other terms of this chapter including but not limited to the background check required of massage establishment owners that are not certified by the CAMTC. All persons under this exemption will be required to display, in the same manner this chapter requires the display of CAMTC certification, a separate statement from the city to show that the person has met the requirements of this exemption. This exemption must be renewed annually and the city may establish a non-refundable fee to recover costs associated with such annual renewals.

(Ord. 2012-05 § 2 (part), 2012)

5.68.050 Massage establishment owner background check required.

A. Any person, association, partnership, or corporation desiring to operate a massage establishment, that will own five percent (5%) or more of the massage establishment, and that is not a certified massage practitioner or certified massage therapist, (meaning certified by the CAMTC) must make an application to the chief of police for an investigation of the applicant's background and history. A fee to recover costs of the background check must accompany the submission of each application. An

annual nonrefundable renewal fee may also be charged to defray associated costs of investigation, inspection and enforcement.

B. Each applicant for a background check must submit the following information:

1. The full true name and any other names used by the applicant.
2. The present address and telephone number of the applicant.
3. Driver's license number and Social Security number.
4. The proposed address of the massage establishment.
5. Each residence and business address of the applicant for the three (3) years immediately preceding the date of the application, and the inclusive dates for such address.
6. Written proof that the applicant is at least eighteen (18) years of age.
7. Applicant's height, weight, and color of eyes and hair.
8. Two (2) photographs of the applicant at least two (2) inches by two (2) inches taken within four (4) months preceding the date of the application.
9. Applicant's business, occupation and employment history for the five (5) years immediately preceding the date of application.
10. The business license or permit history of the applicant, including whether such applicant has ever had any license or permit issued by any agency or board, city, county or state revoked or suspended, or has had any professional or vocational license or permit revoked or suspended and the reason(s) for the revocation.
11. All criminal convictions for any of the offenses set forth in this chapter, and a statement of the dates and places of such convictions.
12. If the applicant is a corporation, the name of the corporation must be set forth exactly as shown in the articles of incorporation or charter, together with the state and date of incorporation and names and residence addresses of each of its current officers and directors, and each stockholder holding more than five percent (5%) of the stock of the corporation. If the applicant is a partnership, the application must set forth the names and residence addresses of each of the partners, including the limited partners. If the applicant is a limited partnership, it must furnish a copy of its certificate of limited partnership filed with the county clerk. If one (1) or more partners is a corporation, the provisions of this section pertaining to corporate applicants will apply. The applicant corporation or partnership must designate one (1) of its officers or general partners to act as its responsible managing officer. Such person must complete and sign all application forms required of any individual applicant under this chapter, but only one (1) application fee will be charged.
13. The name and address of the owner and lessor of the real property upon or in which the massage establishment is to be operated, and a copy of the lease or rental agreement. If the applicant is not the legal owner of the property, a notarized acknowledgment from the owner of the property that a massage establishment will be

located on his or her property is required for each massage establishment permit location.

14. The full true names and other names used, the present addresses and telephone numbers, driver's license numbers, and Social Security numbers, and state certificates from the CAMTC or transitional licenses for all massage technicians who will be working as employees or independent contractors at each massage establishment permit location. The applicant must provide the chief of police with any changes in the massage technicians that work at the massage establishment during the permit period within ten (10) working days of each change.

15. The chief of police may require the applicant to furnish fingerprints when needed for the purpose of verifying identification.

16. Such other identification and information as may be required by the chief of police in order to verify the information to be included in the application.

C. The city is allowed a reasonable time, not to exceed sixty (60) days, in which to investigate the information on the application. During the investigation of the background information, a city representative including, without limitation, a member of the police department, fire department, building and safety division, planning division, or any authorized representative thereof, may inspect, with or without notice during regular business hours, the proposed place of business to determine whether it conforms to the requirements of this chapter. Upon completion of the inspection, the city representative must inform the chief of police in writing of the findings of the inspection. Background clearance will be issued, within sixty (60) days of receipt of the application, to any applicant who has furnished all of the information required by this section in the application for such license, provided all of the following apply:

1. The applicant has not made a material false statement in the application and that all massage technicians who will be working as employees or independent contractors at each massage establishment permit location possesses certification from the CAMTC as a massage practitioner or massage therapist;

2. The applicant, if an individual, or in the case of an applicant which is a corporation or partnership, any of its officers, directors, or holders of five percent (5%) or more of the corporation's stock, has not, within five (5) years immediately preceding the date of the filing of the application been convicted in a court of competent jurisdiction of any of the following offenses: Penal Code §§ 243.4; 261; 266a through 266j; 267; 314 to 316; 318; or 647(a, b, d); any offense requiring registration under Penal Code § 290 or Health and Safety Code § 11590; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code §§ 11054 to 11058, as amended; or any offense in another state which, if committed in California, would have been punishable as one (1) or more of the heretofore mentioned offenses; or any offense involving the use of force or violence upon the person of another; or any offense involving theft, embezzlement or moral turpitude;

3. The applicant, if an individual, is at least eighteen (18) years of age;

4. The applicant has not had a massage technician, massage establishment, escort service, nude entertainment, nude photo studio or similar type of license or permit

suspended within one (1) year or revoked within three (3) years immediately preceding the date of the filing of the application, unless the applicant can show a material change in circumstances or that mitigating circumstances exist since the revocation or suspension.

(Ord. 2012-05 § 2 (part), 2012)

5.68.060 Additional requirements.

Before operating a massage establishment in the city, massage establishment owners must comply with all applicable codes adopted by the city, including, without limitation, the building, electrical, and plumbing codes.

Hours of operation. Massage establishments shall only offer massage services between the hours of 7:00 a.m. and 10:00 p.m. and no patrons for massage services shall be allowed on the premises after 10:00 p.m. or before 7:00 a.m. Pacific Standard Time.

(Ord. 2012-05 § 2 (part), 2012)

5.68.070 Display of permit.

Any owner of a massage establishment or off-premise massage service must display the CAMTC certificates for all massage technicians prominently in a conspicuous place, capable of being viewed by customers or city representatives, at every location where massage is performed or conducted.

For off-premise massage services, massage workers must also carry a copy of their CAMTC certificate and display it to customers upon request.

Any persons operating under the limited exception described in Section 5.68.040(D) must display the statement from the city documenting their exemption from the CAMTC certification prominently in a conspicuous place capable of being viewed by customers or city representatives, or carry it with them for off-premise massage services.

(Ord. 2012-05 § 2 (part), 2012)

5.68.080 Massage technician certificates required.

It is unlawful for owners of massage establishments or off-site massage services to allow any person to perform massage that is not a certified massage therapist, a certified massage practitioner, or has obtained one (1) of exceptions described in this chapter.

(Ord. 2012-05 § 2 (part), 2012)

5.68.090 Prohibited conduct.

A. It is unlawful for any massage technician or any other employee working in a massage establishment or for an out-call massage service, or customers, patrons, or guests of the establishment or service, to engage in any specified sexual activities upon the premises of the massage establishment or the off-premise massage location.

B. It is unlawful for any massage technician or other employee of a massage establishment to expose specified anatomical areas in the presence of any patron, customer, or guest.

C. In the course of administering the massage, it is unlawful for any massage technician or other massage establishment employee to make intentional physical contact with the specified anatomical areas of any customer, patron or guest.

(Ord. 2012-05 § 2 (part), 2012)

5.68.100 Facilities and operations.

A. It is unlawful for any massage establishment to operate unless the massage establishment premises and operation comply with the following minimum requirements:

1. Signs. A readable sign must be posted at the main entrance identifying the establishment as a massage establishment, provided, however, that all such signs must otherwise comply with the sign requirements of this code.

2. Disinfection of instruments. Instruments used for massage must be disinfected before each use. Where instruments for massage are employed, adequate quantities of supplies for disinfection must be available during all hours of operation.

3. Water. Hot and cold running water must be provided at all times.

4. Linen storage. Closed cabinets must be utilized for the storage of clean towels and linen. After use, towels and linen must be removed and stored in a separate container until laundered.

5. Sanitary conditions. All walls, ceilings, floors, steam and vapor rooms, and all other physical facilities for the massage establishment must be kept in good repair and be maintained in a clean and sanitary condition.

6. Clean linen. Clean and sanitary towels and linens must be provided for patrons receiving massage services. No common use of towels or linens is permitted.

7. Compliance with laws. The premises to be used must at all times comply with all applicable state and local laws and regulations.

B. A register of all individuals employed as massage technicians, and copies of their current CAMTC certifications and massage technician business licenses, must be maintained and available for inspection at all times during regular business hours.

C. Each person present in any area of the massage establishment outside the waiting area or other areas open to any member of the public must be a certified massage practitioner or certified massage therapist or the massage establishment owner.

D. The permits and certifications required by this chapter must be displayed in an open and conspicuous public place on the premises.

(Ord. 2012-05 § 2 (part), 2012)

5.68.110 Exceptions.

This chapter does not apply to the following classes of individuals, and no CAMTC certification is required of such persons, while engaged in the performance of the duties of their respective professions:

1. Acupuncturists who are duly certified to practice their profession in the state of California.
2. Barbers, beauticians, and cosmetologists with respect to scalp massage, who are duly permitted pursuant to Business and Professions Code §§ 7301, et seq., in accordance with the limitations of their permits.
3. Persons employed or working at a licensed athletic facility.
4. Medical facilities in which massage is performed as prescribed treatment only on patients of the medical facility.
5. Nurses who are registered or certified as such under the laws of the state of California.
6. Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly permitted to practice their respective professions in the state of California, or provide professional services in lawful compliance with Corporations Code § 13401(a).
7. Recognized schools of massage.
8. Businesses where a massage is performed while the person sits in a chair, such as head and neck massage, foot massage, or as part of a manicure or pedicure, and performed in public view or in an open common room.
9. Massage establishments or out-call massage services that are operating pursuant to a duly issued city business license that is issued prior to the effective date of this chapter shall have until December 31, 2013 to meet the state certification requirement described in Section 5.68.040 and any posting of such requirements detailed in other provisions.
10. This chapter is not intended to regulate massages that are not part of a business occupation.

(Ord. 2012-05 § 2 (part), 2012)

5.68.120 Public nuisance abatement.

Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter is unlawful and a public nuisance. The city attorney is

authorized, in addition to or in lieu of any other legal or criminal proceedings, to commence an action or proceeding for abatement, removal or enjoinder of such massage establishment in the manner provided by law. The city attorney may seek a court order to grant such relief to abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining such an establishment contrary to the provisions of this chapter.

(Ord. 2012-05 § 2 (part), 2012)

5.68.130 Revocation.

A. Grounds for revocation. The police chief or city attorney may revoke approvals issued under this chapter for one (1) or more of the following grounds:

1. Fraud or deceit. That the applicant practiced fraud or deceit in obtaining an approval under this chapter;
2. Violation of chapter. That the massage establishment owner, operator, massage technician, or its employee violated a provision or provisions of this chapter;
3. Criminal conviction. That the massage establishment owner, operator, massage technician, or its employee has been convicted in a court of competent jurisdiction of any offense described in this chapter;
4. Improperly maintained facilities. That the facilities and operations of the massage establishment are not kept in compliance with this chapter and that the owner or operator has failed to promptly remedy any deficiency of which they have been notified. For purposes of this subsection, "notice" means notice given personally, or by leaving notice at the massage establishment premises, or by first class mail, postage prepaid, to the address designated by the massage technician or establishment in accordance with this chapter;
5. Employment of uncertified technicians. That the massage establishment has employed, allowed or permitted an uncertified person to perform massage in the massage establishment;
6. Error. That the approval was issued in error;
7. Civil penalties. Assessment of three (3) or more civil penalties as provided by this chapter during any six (6) month period; or
8. Prohibited conduct. A massage establishment owner, operator, massage technician, or its employee or agent has been found to have engaged in prohibited conduct in violation of this chapter.
9. Notice of revocation. Upon a determination on the grounds to revoke an approval under this chapter, the police chief or city attorney must cause a notice of revocation to be mailed by first class, postage prepaid mail, to the address designated by the massage technician or establishment pursuant to this chapter.

(Ord. 2012-05 § 2 (part), 2012)

5.68.140 Enforcement and penalties.

A. Any person violating any provision of this chapter is liable in a civil action brought by the city attorney for an amount up to \$500 per violation. Such person is also liable for reasonable attorneys' fees and costs incurred by the city attorney in any civil proceeding filed to enforce this chapter. Each day that a violation continues may be considered a new and subsequent offense.

B. Alternatively the city may choose to enforce violations through the administrative code enforcement process described in Chapter 1.13 of the Visalia Municipal Code, with violations being punishable with a \$100 fine for the first violation, a \$200 fine for the second violation, and a \$500 fine for the third and subsequent violations. Each day that a violation continues may be considered a new and subsequent offense.

C. Enforcing this chapter through civil action may be filed as an alternative to criminal enforcement. Civil enforcement does not require the violation to be knowing or willful. A civil or administrative action cannot be filed if the person is being criminally prosecuted.

D. The city attorney may settle any civil enforcement before or after to the filing of a civil action by imposing a civil penalty in an amount not exceeding the potential civil liability, including attorneys' fees, set forth in this section. If such civil penalty is paid in full, the city attorney can agree not to file civil or criminal actions or, if action has already been filed, may dismiss such action. Imposition of all civil penalties is public record.

(Ord. 2012-05 § 2 (part), 2012)

5.68.150 Appeal.

After denial of an application for a massage establishment regulatory permit (the term permit includes the "grandfather exception" to CAMTC certification described in Section 5.68.040), or after denial of renewal of a permit, or suspension or revocation of a permit, the applicant or person to whom the permit was granted may appeal the decision to the city manager, or designee, by filing a written notice with the city clerk within ten (10) business days from the receipt of the notice of denial. The city manager or representative shall hold a hearing on the appeal within thirty (30) business days from the receipt of the notice by the city clerk. The decision of the city manager, or designee, following the hearing shall be final and conclusive. There is no appeal to the City Council. If the denial, suspension or revocation is affirmed on review the applicant or permittee may seek judicial review of such administrative action pursuant to California Code of Civil Procedure § 1094.5. The time for filing such action is governed by California Code of Civil Procedure § 1.

(Ord. 2012-05 § 2 (part), 2012)


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AB-775 Massage therapy. (2019-2020)

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Assembly Bill No. 775

CHAPTER 290

An act to amend Section 4615 of, and to add Section 4615.5 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 12, 2019. Filed with Secretary of State September 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 775, Chau. Massage therapy.

Existing law, the Massage Therapy Act, until January 1, 2021, provides for the certification and regulation of massage therapists and massage practitioners by the California Massage Therapy Council. Existing law requires an applicant for certification as a massage therapist to complete 500 hours of education from an approved school, and requires the council to develop policies, procedures, rules, or bylaws governing the requirements and process for the approval and unapproval of massage schools.

This bill would instead require the council to develop policies, procedures, rules, or bylaws governing the requirements and process for approving, denying approval of, imposing corrective action on, or unapproving schools. The bill would establish specified timelines for the approval of schools, including requiring the council to approve a school, propose to deny approval of a school, or notify the school that corrective action is required on or before one year from the date the council receives an initial application. The bill would authorize a school to appeal the council's final decision to deny approval of the school and would require the council to hear the appeal within a specified time period. The bill would require the council to note on its internet website the date that a letter proposing to deny a school's application for approval or reapproval or requesting corrective action has been sent to the school and the final outcome of the proposed action, as specified. The bill would also require a school offering a professional massage therapy program that has not been approved by the council to notify, and obtain a signed confirmation from, each student that the student has been notified that the school is not approved by the council and that education completed at the school cannot be used to satisfy any of the requirements for certification as a massage therapist or massage practitioner in California.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4615 of the Business and Professions Code is amended to read:

4615. (a) The council shall have the responsibility to determine whether the school from which an applicant has obtained the education required by this chapter meets the requirements of this chapter.

(1) If the council has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the council shall investigate the facts to determine that the applicant received the required education before issuing a certificate.

(2) For purposes of this section and any other provision of this chapter that authorizes the council to receive factual information as a condition of taking any action, the council may conduct oral interviews of the applicant and others or conduct any investigation deemed necessary to establish that the information received is accurate and satisfies the criteria established by this chapter.

(b) (1) The council shall develop policies, procedures, rules, or bylaws governing the requirements and process for approving, denying approval of, imposing corrective action on, or unapproving schools consistent with Section 4601. These policies, procedures, rules, or bylaws shall address topics including, but not limited to, what constitutes an acceptable curriculum, facility requirements, student-teacher ratios, clinical practice requirements, and provisions for the acceptance of accreditation from a recognized accreditation body or other form of acceptance.

(2) The approval process for a school shall be consistent with the following timelines:

(A) (i) On or before 30 days from the date the council receives an initial application for school approval, the council shall notify the school whether or not, for the purpose of preliminary review, the application is complete.

(ii) A notice that an initial application is not complete for the purpose of preliminary review shall specify what additional documents or payment of fees the school is required to submit to the council to make the application complete for the purpose of preliminary review.

(B) Within 60 days from the date the council notifies the school that the initial application is not complete for purposes of preliminary review, the school shall provide the missing information and pay the required fees. If a school fails to do so, the council shall purge the application. The council may, in its sole discretion, provide a school with an additional 30 days to make its application complete for purposes of preliminary review. A school with a purged application may submit a new application for school approval, including the required fees, without prejudice, after 180 days have passed from the effective date of purging. The council shall post on its internet website the effective date of purging.

(C) (i) On or before one year from the date the council receives an initial application for approval as a school, the council shall approve the school, propose to deny approval of the school, or notify the school that corrective action is required. The council reserves the right to issue a one-time notice of corrective action on an initial application. If the school fails to adequately rectify the deficiencies, the council may deny the application.

(ii) Within one year from the date that the council notifies a school of its proposed decision to deny approval of an initial application for school approval, the council shall notify the school of its final decision pursuant to any oral telephonic hearing or consideration of a written statement provided in opposition to the proposed decision to deny approval of the initial application for school approval.

(D) A school may appeal the council's final decision to deny approval of the school. An appeal of the council's final decision to deny approval of a school shall be heard at the next board of directors meeting with a date, as posted on the council's internet website, that is at least 120 days from the last date for the school to timely request an appeal, unless a timely request for a continuance of the hearing date is granted. The council may, in its discretion, for good cause, continue the date an appeal may be heard, in which case the appeal shall be heard at a later board of directors meeting.

(3) The council shall exercise its authority to approve, deny approval of, and unapprove schools and specify corrective action in keeping with the purposes set forth in Section 4603.

(c) The council may charge a reasonable fee for the inspection or approval of schools, provided the fees do not exceed the reasonable cost of the inspection or approval process.

(d) The council shall note on its internet website the date that a letter proposing to deny a school's application for approval or reapproval or requesting corrective action has been sent to the school and the final outcome and date of that proposed action.

(e) For purposes of this section, the following terms have the following meanings:

(1) "Initial application" means a new application submitted by a school for school approval.

(2) "Complete application," for purposes of preliminary review, means an application that the council, after preliminary review, has determined contains all the necessary documents for the council to begin a more thorough review process that allows the council to make a decision to approve or propose to deny the application for school approval or request corrective action. A complete application is not an approved application and a determination by the council upon preliminary review that an application is complete shall not prejudice the council's ability to later determine that the application is not complete.

(3) "Preliminary review" means an initial review conducted by the council to determine if all fees have been paid and if all application and supporting documents have been submitted, so that the council can move forward and begin a more thorough review process. The preliminary review process does not include completion of a site visit or completion of background checks for noncertified individuals.

SEC. 2. Section 4615.5 is added to the Business and Professions Code, to read:

4615.5. A school offering a professional massage therapy program that has not been approved by the council pursuant to this chapter, before enrolling a student in the school, shall notify the student in writing and obtain a signed confirmation from the student that the student has received written notification of the following:

(a) That the school is not approved by the council.

(b) That the education completed at the school cannot be used to satisfy any of the requirements for certification as a massage therapist or massage practitioner in California.