



Council Agenda Report

From: Commander Ty Lewis

Subject: Ordinance to Amend the Municipal Code Pertaining to Massage Services, to Provide Limited, Temporary Licensing of Massage Therapists

Date: May 15, 2018

Note: the City Council held a public hearing on May 1, 2018 during which no one from the public spoke against this ordinance. The City Council then introduced Ordinance No. XX to amend sections 5.38.020, 5.38.030, 5.38.070, 5.38.130, 5.38.160 and 5.38.200 of the Municipal Code pertaining to massage services to provide limited, temporary licensing of massage therapists at first reading. The proposed action for this City Council meeting is to hold second reading and adopt the ordinance. No substantive changes have been made to the proposed ordinance since first reading. A summary of the proposed ordinance, approved by the City Attorney, was printed in a newspaper of general circulation.

Facts

1. In 2013, the City Council amended the City's business license requirements to impose permitting requirements and standards for massage therapists and massage establishments operating in the City. The City's massage therapy requirements were imposed in response to years of complaints of suspected illegal activity occurring at "massage" establishments, which required significant Police Department response and oversight, including organized sting operations, code enforcement, and federal enforcement assistance.
2. The City's current massage ordinance requires massage therapists and massage practitioners to obtain and maintain a valid certificate issued by the state California Massage Therapy Council ("CAMTC") in order to perform massage services in the City. CAMTC is a state nonprofit licensing entity created by the Legislature that imposes rigorous training and educational standards, including a required background check, on individuals seeking a CAMTC certificate for massage therapy.
3. The massage establishments are required by the City's ordinance to obtain a business license, and the owners and operators of the establishments are subject to a background investigation and fingerprinting if they are not certified by CAMTC. Massage establishments are required to employ only CAMTC-certified therapists and practitioners.
4. Massage therapists are not required by State law to obtain a CAMTC certificate in order to practice massage therapy in the State. Cities retain authority pursuant to Business and Professions Code section 4612 to license, regulate, prohibit or permit individuals who do not possess a valid CAMTC certificate. However, if massage therapists possess a CAMTC certificate, they cannot be subjected to additional local licensing and backgrounds checks. In Paso Robles, the City has simply required a CAMTC-issued license to alleviate the administrative burden on the police department regarding licensing of individual therapists. Staff's opinion is that the existing massage ordinance regulations have been extremely effective and easier to enforce.
5. The City has been approached by local businesses, or proposed local businesses, about the difficulty of obtaining a CAMTC certificate and/or hiring only CAMTC-certified therapists. Specifically,

CAMTC requires at least 500 hours of educational coursework from a CAMTC-approved school. Staff has also been informed that, even after satisfying all of CAMTC's criteria for a certificate, it may take months for CAMTC to act on and issue a certificate. As such, Staff has crafted limited exceptions to the City's existing standards to allow certain short-term, interim licensing of massage therapists in the City. The narrow exceptions are intended to help alleviate some of the hardship involved in obtaining a CAMTC certificate, while ensuring that the City's existing standards remain effective.

Options

1. Do nothing;
2. Adopt an ordinance to amend the municipal code pertaining to massage services to provide limited, temporary licensing of massage therapists and make related conforming changes; or
3. Refer back to staff for additional analysis or amendments.

Analysis and Conclusions

Section 5.38.030 of the Municipal Code currently requires any person who performs or engages in the practice of massage for compensation within the city to possess a valid CAMTC certificate obtained and maintained in compliance with the State law. The attached ordinance amends this Section to provide two limited exceptions to the CAMTC certificate requirement:

1. If the applicant has already submitted an application to CAMTC that is pending approval, the applicant may apply for an interim massage therapist license to perform massage services in the city until final issuance of the applicant's CAMTC certificate. The applicant shall demonstrate proof, to the satisfaction of the chief of police, that the person has submitted a complete application to CAMTC, including submission of fingerprint images for a background investigation. Upon approval by the chief of police, the applicant shall be issued an interim massage therapist license to perform massage services in the city, which shall be valid until, and conditioned upon, the applicant obtaining a CAMTC certificate. The interim massage therapist license shall be deemed immediately revoked and terminated if CAMTC denies the applicant's application. The applicant for an interim massage therapist license shall immediately inform the city of issuance, denial, suspension, or revocation of a CAMTC certificate.

*This exception is intended to alleviate the burden on massage therapists who are simply awaiting CAMTC approval, but who have otherwise satisfied all of the State requirements to obtain a CAMTC certificate.

2. If the applicant has not yet satisfied all requirements to obtain a CAMTC certificate, but is working towards obtaining a CAMTC certificate, the applicant may apply for a temporary massage therapist license to perform massage services in the city for a period not to exceed three (3) years. The temporary massage therapist license shall automatically be null and void upon expiration provided, however, that the license may be renewed for a one-year period, upon proof that significant additional CAMTC-approved coursework has been completed. Upon license expiration, the applicant shall immediately cease performing massage services in the city unless and until the applicant obtains a CAMTC certificate in compliance with this chapter. In order to obtain a temporary massage therapist license pursuant to this subsection, the applicant shall submit to the chief of police, on a form approved by the city manager, the following minimum information, with supporting documentation:
 - a. The applicant is 18 years of age or older.

b. The applicant has successfully completed curricula in massage and related subjects totaling a minimum of 250 hours, or the credit unit equivalent, from a school deemed an “approved school” as defined by Business and Professions Code section 4601(a), as may be amended, or as otherwise allowed by CAMTC.

c. The applicant has verifiable work history of working in the massage industry for at least one (1) year.

d. Submission of fingerprints and successful passage of a background check, subject to the same requirements and criteria imposed on owners and operators pursuant to Section 5.38.080. [*which fingerprinting by the police department and payment of reasonable fees to cover costs]

e. The chief of police may deny issuance of a temporary massage therapist license for the same reasons set forth in Section 5.38.080(F) [*which includes various convictions posing a health and safety concern]

f. Any person aggrieved by the decision of the chief of police may appeal that decision to the city manager or designee by filing a notice of appeal within ten days of being notified of the decision, as set forth in Section 5.38.080(G).

*This exception is intended to provide an opportunity for experienced massage therapists to perform massage services in the City prior to obtaining a CAMTC certificate, so long as they eventually obtain and maintain a CAMTC certificate. The requirement of 250 hours of massage curricula represents one-half of the 500 hours required by CAMTC.

The above amendments are intended to serve as limited exceptions – in both duration and scope – to the existing standards to avoid the scenario of completely replacing the City’s current requirements. Staff recommends keeping the exceptions narrow in order to effectively balance local business interests with the City’s interest in preserving the public health and safety regarding massage establishments in the City.

The attached ordinance makes additional, minor edits to the massage ordinance to account for the above exceptions, as well as to update some references to State law that have since been amended.

Fiscal Impact

There is likely to be increased administrative costs associated with police department licensing of massage therapists. The City’s existing ordinance authorizes charging a reasonable fee to recoup the costs associated with fingerprinting and performing a background check, which will apply to the above temporary licenses.

Recommendation (Option 2)

Hold second reading and adopt Ordinance XXXX N.S. to amend Sections 5.38.020, 5.38.030, 5.38.070, 5.38.130, 5.38.160 and 5.38.200 of the Municipal Code pertaining to massage services to provide limited, temporary licensing of massage therapists and make related conforming changes

Attachments

1. Ordinance No. XXXX N.S.

ORDINANCE NO. XXXX N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
TO AMEND SECTIONS 5.38.020, 5.38.030, 5.38.070, 5.38.130, 5.38.160 AND 5.38.200 OF THE MUNICIPAL
CODE PERTAINING TO MASSAGE SERVICES TO PROVIDE LIMITED, TEMPORARY LICENSING OF
MASSAGE THERAPISTS AND MAKE RELATED CONFORMING CHANGES

WHEREAS, in 2013 the City Council amended the City's business license requirements to impose permitting requirements for massage therapists and massage establishments operating in the City; and

WHEREAS, the City's massage therapy requirements were imposed in response to years of complaints of suspected illegal activity occurring at "massage" establishments; and

WHEREAS, unregulated massage establishments required significant Police Department response and oversight, including organized sting operations, code enforcement, and federal enforcement assistance; and

WHEREAS, the City's massage ordinance therefore requires massage therapists and massage practitioners to obtain and maintain a valid certificate issued by the state California Massage Therapy Council ("CAMTC"), a state licensing entity with rigorous training and educational standards, including a required background check; and

WHEREAS, notwithstanding the City's existing standards for massage therapists and massage establishments, the City has an interest in providing limited, temporary licensing of massage therapists who are not yet certified by CAMTC, in order to alleviate some of the hardship and time it takes to successfully obtain a CAMTC certificate to practice; and

WHEREAS, Business and Professions Code section 4612 reaffirms the City's authority to license, regulate, prohibit, or permit individuals who provide massage for compensation in the City without a valid CAMTC certificate; and

WHEREAS, the intent of this Ordinance is to provide a very limited exception to the City's requirement that massage therapists obtain a CAMTC-issued certificate, and is not intended to wholly replace the City's existing standards; and

WHEREAS, the City Council finds that this Ordinance more effectively balances local business interests with the City's interest in preserving the public health and safety regarding massage establishments in the City.

NOW, THEREFORE, the City Council of the City of El Paso de Robles does hereby ordain as follows:

SECTION 1. Recitals. The City Council finds that the above recitals are true and hereby incorporates them into this Ordinance by this reference.

SECTION 2. Amendment. The defined terms "CAMTC certificate," "Certified massage practitioner," and "Certified massage therapist" contained in Section 5.38.020 of the Paso Robles Municipal Code are hereby amended as follows (deletions noted in ~~striketrough~~, additions in underline):

"CAMTC certificate" means a ~~massage practitioner~~valid certificate issued by the CAMTC ~~pursuant to~~within the meaning of Business and Professions Code section 4601(b), ~~or a massage therapist certificate issued by the CAMTC pursuant to Business and Professions Code section 4601(c).~~

"Certified massage practitioner" or "practitioner" means any person to whom the CAMTC has issued a certificate pursuant to Business and Professions Code section 4604.1 or 4604.2, 1(b), and who provides massage services for compensation.

"Certified massage therapist" or "therapist" means any person to whom the CAMTC has issued a certificate pursuant to Business and Professions Code section 4604~~(e)~~, and who provides massage services for compensation.

SECTION 3. Amendment. Section 5.38.030 of the Paso Robles Municipal Code is hereby amended to read in full as follows (deletions noted in ~~strike through~~, additions in underline):

5.38.030 - Permit required.

- A. It is unlawful for any person to perform or engage in the practice of massage for compensation within the city without possessing a valid CAMTC certificate obtained and maintained in compliance with the massage therapy act. All persons certified by the CAMTC shall have the right to perform or engage in the practice of massage consistent with the massage therapy act, the qualifications established by his or her certification, and the provisions of this chapter.
- B. Notwithstanding subsection A., an individual may apply to the city for an interim or temporary license to perform massage services in the city without first obtaining a CAMTC certificate, as follows:
1. If the applicant has already submitted an application to CAMTC that is pending approval, the applicant may apply for an interim massage therapist license to perform massage services in the city until final issuance of the applicant's CAMTC certificate. The applicant shall demonstrate proof, to the satisfaction of the chief of police, that the person has submitted a complete application to CAMTC, including submission of fingerprint images for a background investigation. Upon approval by the chief of police, the applicant shall be issued an interim massage therapist license to perform massage services in the city, which shall be valid until, and conditioned upon, the applicant obtaining a CAMTC certificate. The interim massage therapist license shall be deemed immediately revoked and terminated if CAMTC denies the applicant's application. The applicant for an interim massage therapist license shall immediately inform the city of issuance, denial, suspension, or revocation of a CAMTC certificate.
 2. If the applicant has not yet satisfied all requirements to obtain a CAMTC certificate, but intends to continue working towards issuance of a CAMTC certificate, the applicant may apply for a temporary massage therapist license to perform massage services in the city for a period not to exceed three (3) years. The temporary massage therapist license shall automatically be null and void upon expiration provided, however, that the license may be renewed for a one-year period, upon proof that significant additional CAMTC-approved coursework has been completed. Upon license expiration, the applicant shall immediately cease performing massage services in the city unless and until the applicant obtains a CAMTC certificate in compliance with this chapter. In order to obtain a temporary massage therapist license pursuant to this subsection, the applicant shall submit to the chief of police, on a form approved by the city manager, the following minimum information, with supporting documentation:
 - a. The applicant is 18 years of age or older.
 - b. The applicant has successfully completed curricula in massage and related subjects totaling a minimum of 250 hours, or the credit unit equivalent, from a school deemed an "approved school" as defined by Business and Professions Code section 4601(a), as may be amended, or as otherwise allowed by CAMTC.
 - c. The applicant has verifiable work history of working in the massage industry for at least one (1) year.
 - d. Submission of fingerprints and successful passage of a background check, subject to the same requirements and criteria imposed on owners and operators pursuant to Section 5.38.080.

e. The chief of police may deny issuance of a temporary massage therapist license for the same reasons set forth in Section 5.38.080, subsection F.

f. Any person aggrieved by the decision of the chief of police may appeal that decision to the city manager or designee by filing a notice of appeal within ten days of being notified of the decision, as set forth in Section 5.38.080, subsection G.

3. Individuals issued an interim or temporary massage therapist license pursuant to this section shall otherwise be subject to all the same requirements for certified massage practitioners and certified massage therapists set forth in this chapter.

SECTION 4. Amendment. Section 5.38.070 of the Paso Robles Municipal Code is hereby amended to read in full as follows (deletions noted in ~~strike through~~, additions in underline):

5.38.070 - Regulation of massage establishment.

A. It shall be unlawful for any massage establishment or its owner(s) or operator(s) to hire or employ any person for the purpose of performing or engaging in the practice of massage without requiring that person to possess a valid CAMTC certificate or an interim or temporary license issued by the city under Section 5.38.030, subsection B.

B. It shall be unlawful for any massage establishment or its owner(s) or operator(s) to allow an independent contractor to perform or engage in the practice of massage at the massage establishment if that independent contractor does not possess a valid CAMTC certificate or an interim or temporary license issued by the city under Section 5.38.030, subsection B.

SECTION 5. Amendment. Section 5.38.130 of the Paso Robles Municipal Code is hereby amended to read in full as follows (deletions noted in ~~strike through~~, additions in underline):

5.38.130 - Proof of certification.

A. Every massage establishment shall maintain on its premises evidence for review by city authorities that demonstrates that all persons providing massage services at the business establishment, whether such persons are employees or independent contractors, are certified by the CAMTC or have been issued an interim or temporary license by the city under Section 5.38.030, subsection B.

B. Every certified massage practitioner and certified massage therapist shall display his or her CAMTC certificate or interim or temporary license by the city at his or her place of business.

SECTION 6. Amendment. Section 5.38.160, subsection D., of the Paso Robles Municipal Code is hereby amended as follows (deletions noted in ~~strike through~~, additions in underline):

D. It shall be unlawful for any person who does not possess a valid and current CAMTC certificate or an interim or temporary city license to do any of the following within the city:

a. Advertise or represent to the public in any manner that he or she is certified, registered, or licensed by a government agency as a massage practitioner or massage therapist; or

b. Hold himself or herself out as, or use the title of, "certified massage practitioner" or "certified massage therapist" or any other term such as "licensed" or "registered" that implies or suggests that he or she possesses a current and valid CAMTC certificate or interim or temporary license by the city.

SECTION 7. Amendment. Section 5.38.200, subsection A., of the Paso Robles Municipal Code is hereby amended as follows (deletions noted in ~~strickthrough~~, additions in underline):

- A. The ~~city manager~~chief of police may revoke approvals issued under this chapter for one or more of the following reasons:
1. The applicant practiced fraud or deceit in obtaining an approval under this chapter.
 2. The massage establishment owner, operator, employee, or any person performing or engaging in the practice of massage, violated a provision or provisions of this chapter or of the massage therapy act.
 3. The facilities and operations of the massage establishment are not maintained in compliance with the provisions of this chapter, and the owner or operator has failed to promptly remedy any deficiency for which they have received notice. For purposes of this provision, "notice" means notice given personally to an owner or operator of the massage establishment; notice delivered to the massage establishment premises; or notice mailed to an address provided in the business license application.
 4. The massage establishment has employed, allowed, or permitted a person who either is ~~was~~ not certified by the CAMTC, or has not been issued an interim or temporary license by the city, to perform massage services at the massage establishment.
 5. An independently employed certified massage practitioner or therapist is no longer in possession of a current and valid CAMTC certificate and has not been issued an interim or temporary license by the city.
 6. The approval was issued in error.

SECTION 8. Severability. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 9. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption. A summary of this Ordinance was published at least five (5) days before its adoption and a summary shall be published within fifteen (15) days of its adoption in a newspaper of general circulation published and circulated within the City, showing the names of those members of the City Council voting for and against the Ordinance.

INTRODUCED on the 1st day of May, 2018, and PASSED AND ADOPTED by the City Council of the City of El Paso de Robles on this 15th day of May, 2018, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk