



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council **DATE:** February 20, 2018

FROM: Matthew Bronson, City Manager

PREPARED BY: John Peters, Chief of Police

SUBJECT: Introduction and First Reading of Amendments to Article III, Chapter 9
of the Grover Beach Municipal Code Regarding Massage Therapy
Regulations

RECOMMENDATION

Introduce and conduct first reading of the Ordinance to amend the Grover Beach Municipal Code regarding massage therapy regulations and schedule second reading and adoption for the next regularly scheduled City Council meeting.

BACKGROUND

On February 6, 2017, the Grover Beach City Council adopted new massage therapy regulations that updated Grover Beach Municipal Code Article III, Chapter 9. The new regulations brought the City's regulations into compliance with recent State legislation. During the past year, staff has worked with multiple massage technicians and establishments in enacting the new regulations. As a result of this interaction, staff has identified a few areas that need to be updated further. These new updates would result in the following changes:

- Section 3903(8) would have the added language of "...all arrests, felony or misdemeanor convictions, pleas of guilty, nolo contendere or expungements,..." This language is consistent to language used in other Grover Beach Municipal Code sections.
- Section 3904(K) and (L) would have the added language of "...stored,..." in reference to storage of alcohol, tobacco and cannabis products inside massage establishments.
- Section 3908(A)(2) would have the added language of "*Acupuncturists who are duly licensed under the laws of the State of California while engaging in the practice of acupuncture pursuant to California law.*"
- Section 3910(E) would be eliminated in its entirety.
- Section 3911(A)(2) would have the added language of "...arrested or..." in in the suspension or revocation of an establishment permit when an establishment owner or proprietor is arrested for the commission a sex crime.
- Section 3913 Appeal – would be amended as follows, "*In the event the Chief of Police has denied the issuance or renewal of a Massage Establishment Permit, or has revoked an existing Massage Establishment Permit, otherwise referred to as an Administrative Decision, the applicant or Owner may elect to file an appeal of that decision to the City Manager. The applicant, or their representative, shall within ten (10) days of the mailing of the notice related to the Administrative Decision, file a written appeal to the City Clerk. All appeals must be in writing and an appeal fee must accompany the written appeal in an*

amount as indicated in the Master Fee Schedule.” As with other Administrative Decisions, the City Manager’s decision is appealable to the City Council.

The proposed ordinance amendments were reviewed for content by state representatives at the California Massage Therapy Council and they had no objections.

FISCAL IMPACT

There is no fiscal impact with implementation of these amended regulations.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Consider public testimony, introduce and conduct the first reading of the Ordinance, by title only, and schedule second reading and adoption for the next regularly scheduled City Council meeting; or
2. Provide direction to staff.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act. A Public Hearing Notice was published in The Tribune on Friday, February 9, 2018. A copy of the Public Hearing Notice was mailed to the California Massage Therapy Council and to the Arroyo Grande-Grover Beach Chamber of Commerce.

ATTACHMENTS

1. Draft Ordinance - Proposed Grover Beach Municipal Code Article III, Chapter 9 regarding Massage Therapy Regulations.

ORDINANCE NO. 18-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH AMENDING SUBSECTION (A) OF SECTION 3903; SUBSECTIONS (K) AND (L) OF SECTION 3904; SUBSECTION (A) OF SECTION 3908; SUBSECTION (F) OF SECTION 3910; SUBSECTION (A) OF SECTION 3911; REPEALING SUBSECTION (H) OF SECTION 3903; SUBSECTION (E) OF SECTION 3910; AND ADDING SECTION 3913 OF CHAPTER 9 OF ARTICLE III OF THE GROVER BEACH MUNICIPAL CODE RELATED TO MASSAGE THERAPY REGULATIONS

WHEREAS, the City Council recognizes that massage is a viable professional field offering the public health and therapeutic services; and

WHEREAS, the California legislature and courts have long recognized the necessity of imposing reasonable regulations and standards for the operation of massage businesses, including, but not limited to, minimum educational and experience requirements, passage of a practical examination of competence, sanitary conditions, hours of operation, and other operational regulations designed to minimize opportunities for illegal activities and to ensure the protection of the health, safety and welfare of citizens; and

WHEREAS, the application, education, health and safety requirements imposed by this chapter are reasonable necessary to protect the health, safety and welfare of the citizens of Grover Beach.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Grover Beach as follows:

PART 1. Subsection (A) of Section 3903 of the Grover Beach Municipal Code is hereby amended as follows:

(A) Application. The application for a massage establishment permit shall include all of the following:

- (1) Legal name of the massage business.
- (2) Address and telephone number of the proposed massage business location.
- (3) Legal names of all owners of the massage business.
- (4) A list of all of the massage business's employees and independent contractors who will be performing massage and a current copy of their CAMTC certification.
- (5) Residential address and telephone number of all owners of the massage business.
- (6) Business address and telephone number of all owners of the massage business.
- (7) The form of business under which the massage business will be operating (i.e., corporation, general or limited partnership, limited liability company, or other form).
- (8) Each owner or operator of the massage business who is not a CAMTC-Certified Massage Practitioner shall submit an application for a background check, including the following: Live Scan fingerprints, all arrest, felony or misdemeanor convictions, pleas of guilty, nolo contendere or expungements, the individual's business, occupation, and employment history for the five (5) years preceding the date of the application; the inclusive dates of such employment history; the name and address of any massage business or similar business owned or operated by the individual whether inside or outside the City of Grover Beach.

(9) For all owners, a valid and current driver's license and/or identification issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

(10) For all owners, a signed statement that all of the information contained in the application is true and correct; that all owners shall be responsible for the conduct of the business's employees or independent contractors providing massage services; and acknowledging that failure to comply with the California Business and Professions Code sections 4600 *et seq.*, any local, state, or federal law, or the provisions of this Chapter may result in revocation of the business's massage establishment permit.

Subsections (K) and (L) of Section 3904 of the Grover Beach Municipal Code is hereby amended as follows:

(K) No alcohol beverage shall be stored, sold, served or furnished on the premises of any massage establishment. No person shall enter, be, or remain in any part of a massage establishment while in possession of an open container of alcohol, or consuming or using any alcoholic beverage. The owner, operator, responsible managing employee, or manager shall not permit any such person to enter or remain upon such premises.

(L) No tobacco products, as defined in GBMC Article X, Chapter 4.20, Section 10421, or marijuana cannabis products shall be stored, sold, served, consumed or furnished on the premises of any massage establishment. No person shall enter, be, or remain in any part of a massage establishment while consuming or using any tobacco or marijuana cannabis product. The owner, operator, responsible managing employee, or manager shall not permit any such person to enter or remain upon such premises.

Subsection (A) of Section 3908 of the Grover Beach Municipal Code is hereby amended as follows:

(A) The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties and providing massage therapy under their scope of practice:

(1) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.

(2) Acupuncturists who are duly licensed under the laws of the State of California while engaging in the practice of acupuncture pursuant to California law.

~~(23)~~ Barbers and beauticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face and/or scalp, hands or feet of the clients.

~~(34)~~ Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the State of California, and employees of these licensed institutions, while acting within the scope of their employment.

~~(45)~~ Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

~~(56)~~ Trainers of amateur, semi-professional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event.

(6Z) Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic or recreational event, such as, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:

- (a) The massage services are made equally available to all participants in the event;
- (b) The event is open to participation by the general public or a significant segment of the public such as employees of sponsoring or participating corporations;
- (c) The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;
- (d) The sponsors of the event have been advised of and have approved the provisions of massage services;
- (e) The persons providing the massage services are not the primary sponsors of the event.

Subsection (E) of Section 3910 is repealed in its entirety and Subsection (F) of Section 3910 of the Grover Beach Municipal Code is amended as follows:

~~(E) Appeals. Any person aggrieved by any administrative action taken under this chapter may, within ten (10) days of the date of the administrative action, file an appeal in writing. The appeal process shall be followed as outlined in Article 1, Chapter 4 of the Grover Beach Municipal Code.~~

(FE) Failure to Pay Fine. If said fine is not paid within the time period specified on the administrative violation an additional late fee shall be charged. The amount of the late fee shall be ten percent (10%) of the total amount of the civil penalty due. In addition, any outstanding fines must be paid prior to the issuance or renewal of any massage establishment permit or City of Grover Beach Business Tax Certificate. The City shall collect delinquent or unpaid penalties as outlined in Article 1, Chapter 4 of the Grover Beach Municipal Code.

Subsection (A) of Section 3911 of the Grover Beach Municipal Code is amended as follows:

(A) Reasons. Massage Establishment Permits may be suspended or revoked by the Police Chief upon finding any of the following grounds:

(1) A Massage Practitioner is no longer in possession of current and valid CAMTC-certification. This subsection shall apply to a sole proprietor or a person employed or used by a massage establishment to provide massage.

(2) An owner or sole proprietor: is required to register under the provisions of California Penal Code section 290 (sex offender registration); is arrested or convicted of California Penal Code sections 266i (pandering), 315 (keeping or residing in a house of ill-fame), 316 (keeping disorderly house), 318 (prevailing upon person to visit a place for prostitution), 647(b) (engaging in or soliciting prostitution), 653.22 (loitering with intent to commit prostitution), 653.23 (supervision of prostitute); has a business permit or license denied, revoked, restricted, or suspended by any agency, board, city, county, territory, or state; is subject to an injunction for nuisance pursuant to California Penal Code sections 11225-11235 (red light abatement); is convicted of a felony offense involving a controlled substance; is convicted of any crime involving dishonesty, fraud, deceit, violence, or moral turpitude; or is convicted in any other state of an offense which, if committed in this state, would have been punishable as one or more referenced offenses in this subdivision.

(3) The City determines that a material misrepresentation was included on the application for a massage establishment permit or a Grover Beach Business Tax Certificate or renewal of either.

(4) Violations of any of the following occurred on the premises of a massage establishment or were committed by a Massage Practitioner: California Business and Professions Code sections 4600 *et seq.*; any local, state, or federal law; or the provisions of this chapter.

Section 3913 of the Grover Beach Municipal Code is replaced in its entirety to read as follows:

In the event the Chief of Police has denied the issuance or renewal of a Massage Establishment Permit, or has revoked an existing Massage Establishment Permit, otherwise referred to as an Administrative Decision, the applicant or Owner may elect to file an appeal of that decision to the City Manager. The applicant, or their representative, shall within ten (10) days of the mailing of the notice related to the Administrative Decision, file a written appeal to the City Clerk. All appeals must be in writing and an appeal fee must accompany the written appeal in an amount as indicated in the Master Fee Schedule.

PART 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance or the chapter. The legislative body hereby declares that it would have passed the ordinance codified in this chapter and each section, subsection sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses or phrases be declared unconstitutional.

PART 3. This Ordinance shall become effective thirty (30) days after the date of its adoption, and within fifteen (15) days after its adoption, it shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

INTRODUCED at a regular meeting of the City Council held February 20, 2018 and **PASSED, APPROVED,** and **ADOPTED** by the City Council on, 2018 on the following vote, to wit:

AYES:	Council Members –
NOES:	Council Members –
ABSENT:	Council Members –
ABSTAIN:	Council Members –

**** D R A F T ****

JOHN P. SHOALS, MAYOR

ATTEST:

DONNA L. McMAHON, CITY CLERK

Approved as to form:

DAVID P. HALE, CITY ATTORNEY