



**City of Grass Valley
Police Department
Agenda Action Sheet**

Council Meeting Date: April 12, 2016

Date Prepared: April 6, 2016

Prepared by: Steve Johnson, Police Lieutenant

A handwritten signature in black ink, appearing to be "S. Johnson", written over a circular stamp or mark.

Title: Adoption on second reading of Ordinance 774 amending Chapter 9.10 of Title 9 of the Grass Valley Municipal Code requiring general liability insurance for massage establishments.

Recommended Action: Adopt on second reading of Ordinance 774, **by Title only**, amending Chapter 9.10 of Title 9 of the Grass Valley Municipal Code requiring general liability insurance for massage establishments in Grass Valley.

Agenda: Consent

Background Information: On March 8, 2016, the Grass Valley City Council voted to adopt a new ordinance regulating massage establishments. During discussion at the council meeting, it was noted that the ordinance did not have a requirement that massage establishments maintain general liability insurance. General liability insurance will ensure that patrons of massage establishments are protected in the event of injury.

Since that March 8 meeting, I have spoken to several massage therapists who are currently licensed and practicing in the city of Grass Valley. Each of them had a \$1,000,000 general liability insurance policy and relayed to me that this requirement would not be an additional burden on them. Therefore, this ordinance is proposed to council to amend the current ordinance and add a general liability insurance requirement.

The ordinance requires operators of massage establishments to maintain general liability insurance of at least \$1,000,000 per occurrence for injury or death to one person arising out of the operation of the massage establishment and the administration of a massage. The ordinance also requires applicants for massage operator's permits to provide written proof of the general liability insurance to the chief of police to ensure compliance. The insurance must be issued by an insurance company authorized to do business in the State of California.

Attachments: Copy of Ordinance

Reviewed by:

City Manager

City Attorney

City Clerk

Finance

ORDINANCE NO. 744

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF GRASS VALLEY AMENDING CHAPTER 9.10
OF TITLE 9 OF THE GRASS VALLEY MUNICIPAL CODE
REQUIRING GENERAL LIABILITY INSURANCE
FOR MASSAGE ESTABLISHMENTS

Be it ordained by the council of the City of Grass Valley as follows:

SECTION 1. Amendment of Section 9.10.050. Section 9.10.050 of Chapter 9.10 of Title 9 of the Grass Valley Municipal Code is hereby amended to read as follows:

9.10.050 – Operator’s permit—Application.

- A. Any person desiring to obtain a permit to operate a massage establishment shall submit a written application, signed under penalty of perjury, to the chief of police using a form specifically adopted by the chief of police for that purpose. The application shall be accompanied by a nonrefundable filing fee established by resolution of the city council to defray the cost of the investigation required by this chapter.
- B. The application shall be completed and signed by the owner of the proposed massage establishment, if a sole proprietorship, or, if the applicant is a corporation or partnership, it shall designate one of its officers or general partners as its authorized representative. The authorized representative shall complete and sign all application forms required for an individual applicant under this chapter.
- C. The application and fee required pursuant to this section shall be in addition to any other license, permit or fee required by any other chapter of this code or ordinance hereafter adopted. Only one application fee shall be charged regardless of the number of owners or operators designated in the application.
- D. The application for a permit does not authorize the operation of a massage establishment unless and until such permit has been properly granted, nor does the possession of a valid operator’s permit authorize the possessor to perform work for which a massage certificate is required.
- E. The application for an operator’s permit shall contain or be accompanied by the following information:
 1. The type of ownership of the business (individual, partnership, corporation or otherwise):
 - i. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence

addresses of each of its current officers, directors and each stockholder holding more than five percent of the stock of that corporation,

- ii. If the applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners,
 - iii. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply;
2. The true full and precise name under which the massage establishment is to be conducted;
3. The present or proposed address where the massage establishment is to be conducted and all telephone numbers for the massage establishment;
4. A complete current list of the names and residence addresses of all proposed massage technicians, aides, trainees and other employees who are or will be employed in the massage establishment, if known. If not known at the time of submission of the application, the applicant shall provide the required information no later than ten calendar days prior to opening for business;
5. The name and residence addresses of the proposed operator or manager who will be principally in charge of the operation of the massage establishment;
6. Written proof of compliance with the general liability insurance required by section 9.10.070(F) including a certificate of insurance or other document issued by an insurance company authorized to do business in the State of California. |
[GBB1]
7. A description of any other business operated on the same premises as the proposed massage establishment, or within the city or the state, which is owned or operated by the owner or operator;
8. The name and address of the owner and lessor of the real property upon or in which the proposed business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized affidavit from the owner of the property acknowledging that a massage establishment will be located on his or her property;
9. The complete business, occupation and employment history for five years preceding the date of application, including, but not limited to, a massage establishment or similar type of business history and experience of the applicant;

10. The complete massage permit history; whether such person has ever had any similar type of permit or license issued by any agency, board, city, county, territory or state; the date of issuance of such a permit or license, whether the permit or license has been or was ever denied, revoked or suspended; if a vocational or professional license or permit has been or was ever denied, revoked or suspended; if the applicant has ever been required to surrender a permit or license as a result of pending criminal charges or in lieu of said permit or license being suspended or revoked and the reason therefor;
11. All criminal convictions, including pleas of nolo contendere, within the last ten years including those convictions dismissed or expunged pursuant to Penal Code section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefor, for the applicant, or any of the officers or directors of the corporation, a partner or any person directly engaged or employed in the massage establishment;
12. Authorization for the city, its agents and employees to seek verification of the information contained in the application;
13. Such other identification and information as the chief of police may reasonably require in order to discover the truth of the matters herein specified and as required to be set forth in the application;
14. A statement in writing and dated by the person providing the information that he or she certifies under penalty of perjury that all information contained in the application is true and correct;
15. A certificate of compliance from any department or agency with authority or jurisdiction over the building in which the massage establishment is to be located, including but not limited to, the city's community development department, building division, and the Nevada County public health department must be submitted prior to the application's final approval. Any required inspection fees shall be the sole responsibility of the applicant. If the certificates of compliance are not received by the chief of police or his or her designee, within ninety calendar days of the date of filing of the application, said application shall be deemed void. If any land use permit or other entitlement for the use of the property as a massage establishment is required, such permit or use entitlement shall be obtained by the applicant prior to the massage establishment permit becoming effective.

F. Every owner and operator shall also provide the following personal information:

1. The owner or operator's full, true name and all aliases used;
2. Date and place of birth, California driver's license, California identification card, Social Security card and resident alien card, if applicable;

3. The current residence address and residence telephone number.

- G. If, during the term of a permit, the permittee has any change in information submitted on the original or renewal application, the permittee shall notify the police department in writing of any such change within ten business days thereafter.
- H. If an owner or operator also desires to act as a massage technician or out call massage technician, he or she shall also satisfy the requirements for the respective permit set forth in this chapter.

SECTION 2. Amendment of Section 9.10.070. Section 9.10.070 of Chapter 9.10 of Title 9 of the Grass Valley Municipal Code is hereby amended to read as follows:

9.10.070 – Operating requirements—General conditions.

All massage establishments shall comply with the following general conditions and any other conditions specified by the chief of police which are consistent with state law.

- A. No person granted a permit pursuant to this chapter shall use any name or conduct business under any designation not specified in his or her permit.
- B. No massage establishment shall employ a massage technician in that capacity who does not possess a current and valid CAMTC certification.
- C. All massage establishments required to be licensed under this chapter shall have a manager on the premises at all times when the massage establishment is open. The operator of each massage establishment shall file a statement with the chief of police or designee, designating the person or persons with power to act as a manager. The operator or on duty manager shall post, on a daily basis, the name and photograph (a minimum size of four inches by six inches) of each on-duty manager and each on-duty massage technician in a conspicuous public place in the lobby of the massage establishment. The operator, or the manager in the operator's absence, shall be responsible for ensuring compliance with this chapter.
- D. The operator's permit shall be displayed in a conspicuous public place in the lobby of the massage establishment.
- E. The hours of operation must be posted in the front window and clearly visible from the outside.
- F. [The operator shall maintain in full force and effect at all times general liability insurance, issued by an insurance company authorized to do business in the State of California, in an amount not less than one million dollars (\$1,000,000.00) per occurrence for injury or death to one (1) person arising out of the operation of the massage establishment and the administration of a massage.] [GBB2]

- G. No massage establishment required to be licensed under this chapter shall open for business without having at least one massage technician who holds a current valid massage certificate. There shall be at least one massage technician who holds a current valid massage certificate on the premises, and on duty, at all times when the establishment is open.
- H. The operator or manager shall ensure that the massage certificate for each on-duty massage technician is conspicuously displayed in a public place in the lobby and that each massage technician is wearing the identification required by section 9.10.160(B) at all times when working in the massage establishment. Such identification shall be provided to a city official upon demand.
- I. An operator or manager shall be responsible for the conduct of all employees while they are on the massage establishment premises. Any act or omission of any employee or independent contractor constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator or manager for purposes of determining whether the operator's license shall be revoked, suspended, denied or renewed.
- J. No operator or manager shall employ any person as a massage technician who does not have a valid massage certificate issued pursuant to this chapter or a massage certificate in good standing. Every operator or manager shall report to the chief of police or designee, any change of employees, whether by new or renewed employment, discharge or termination, on the form and in the manner required by the chief of police. The report shall contain the name of the employee and the date of hire or termination. The report shall be made within five calendar days of the date of hire or termination. The operator or manager shall deliver notice of the termination of any massage technician no longer employed by the operator or manager to the chief of police or designee, within five calendar days of termination.
- K. All employees, including massage technicians, shall, at all times while on the business premises, wear clean clothing that is not transparent, see-through or which substantially exposes undergarments, breasts, buttocks or genitals or any manner that constitutes a violation of Section 314 of the Penal Code. Swim attire is not permitted unless providing a water-based massage modality approved by the California Massage Therapy Council. Massage technicians shall maintain the massage certificate badge visibly on their person affixed to the right front of their clothing at all times during business hours.
- L. It is unlawful for owners or employees of massage establishments or off-premises massage services, or massage technicians, to conduct or allow any of the following activities:
 - a. It is unlawful for any massage practitioner or technician or any other employee working in a massage establishment or for an off-premise 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 client, patron, customer, or guest.
 - c. In the course of administering the massage, it is unlawful for any massage practitioner or technician or other massage establishment employee to make intentional physical contact with the specified anatomical areas of any customer, patron or guest.
- M. The operator or manager shall maintain a register of all employees. The employee register shall be maintained on the premises for a minimum period of two years following an employee's termination. The operator or manager shall make the employee register immediately available for inspection upon demand of a representative of the police department at all reasonable times. The employee register shall include, but not be limited to, the following information:
- a. The name, nicknames or aliases used by an employee;
 - b. The employee's home address and relevant phone numbers (including, but not limited to, home, cellular and pager numbers);
 - c. The employee's age, date of birth, gender, height, weight, color of hair and eyes, or a photocopy of the employee's California driver's license or California identification card;
 - d. The employee's Social Security number;
 - e. The date of employment and termination, if any;
 - f. The massage technician's CAMTC certification information;
 - g. The duties of each employee.
- N. No massage establishment shall operate as a school of massage, or use the same facilities as that of a school of massage.
- O. At all times, the operator, manager and employees shall comply with all provisions of this chapter and any applicable provisions of this code.

SECTION 3. CEQA Findings. This Ordinance is not a project within the meaning of Section 15378 of the CEQA (California Environmental Quality Act) Guidelines because it has no potential for resulting in physical change in the environment, directly or indirectly. In the event this Ordinance is found to be a project under CEQA: (1) it is subject to the CEQA exemption

contained in CEQA Guideline 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment, and (2) it is categorically exempt from CEQA pursuant to CEQA Guideline 15305 because it involves minor alterations in land use limitations.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons and circumstances. The City Council of the City of Grass Valley hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION 4. Effective Date. This Chapter shall be in full force and effect thirty (30) days after adoption as provided by Article VII, § 2 of the City Charter.

SECTION 6. Publication. The City Clerk shall certify to the passage and adoption of this Chapter and shall cause the same to be published once in **The Union**, a newspaper of general circulation, printed, published, and circulated within the City.

INTRODUCED and first read at a regular meeting of the City Council on the _____ day of _____, 20__.

FINAL PASSAGE AND ADOPTION by the City Council of the City of Grass Valley was at a meeting thereof held on the _____ day of _____, 20__, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINING:

Jason Fouyer, Mayor

APPROVED AS TO FORM:

ATTEST:

Michael G. Colantuono, City Attorney

Kristi K. Bashor, City Clerk