

**ORDINANCE NO. 15-2015**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 4.32 "MASSAGE BUSINESSES" TO INCLUDE A CALIFORNIA MASSAGE THERAPY COUNCIL CERTIFICATION EXEMPTION, AND AMENDING ELK GROVE MUNICIPAL CODE SECTION 4.10.150 "APPEAL OF REVOCATION OR SUSPENSION"**

**WHEREAS**, the City of Elk Grove has an interest in regulatory licensing of businesses within the City; and

**WHEREAS**, on April 8, 2015 the City of Elk Grove adopted Elk Grove Municipal Code Chapter 4.32 "Massage Businesses" which introduced municipal regulation requiring massage providers within the City to obtain State certification through the California Massage Therapy Council; and

**WHEREAS**, since the enactment of Elk Grove Municipal Code Chapter 4.32, it has been discovered that certain massage providers who have been long-time special business licensees within the City, would have difficulty obtaining certification through the California Massage Therapy Council because their training was completed so long ago that their completed hours are not recognized for current State certification requirements; and

**WHEREAS**, an amendment to Elk Grove Municipal Code Chapter 4.32, to include a California Massage Therapy Council certification exemption, would permit these long-time massage providers to continue working within the City under the regulations of a City of Elk Grove employee permit or special business license; and

**WHEREAS**, by continuing to regulate these exempted massage providers through regulatory licensing, the City can maintain the public health, safety and welfare concerns address through Elk Grove Municipal Code Chapter 4.32; and

**WHEREAS**, Elk Grove Municipal Code Section 4.10.150 relates to the appeal of a revocation or suspension for a City of Elk Grove special business license or employee permit; and

**WHEREAS**, Elk Grove Municipal Code Section 4.10.150 allows the licensee or permit holder thirty (30) days to file a written appeal, which conflicts with Elk Grove Municipal Code Chapter 1.11 "Appeals" which was amended in 2013 and limited the time for an appellant to file a request for appeal to fifteen (15) days; and

**WHEREAS**, by amending Elk Grove Municipal Code Section 4.10.150 to refer the appellant to Elk Grove Municipal Chapter 1.11, Section 4.10.150 will remain consistent with Chapter 1.11.

**NOW, THEREFORE**, the City Council of the City of Elk Grove does ordain as follows:

## Section 1: Purpose and Intent

The purpose of this Ordinance is to amend Elk Grove Municipal Code to provide a California Massage Therapy certification exemption to qualified massage providers who have lawfully and legitimately conducted their business within the City of Elk Grove, prior to the effective date of Elk Grove Municipal Code Chapter 4.32. This Ordinance will provide for continued municipal regulation over exempt massage providers, to maintain the public health, safety and welfare.

This Ordinance will also bring Elk Grove Municipal Code Section 4.10.150 into consistency with previously amended changes that were made to Elk Grove Municipal Code Chapter 1.11 regarding appeals.

## Section 2: Findings

- A. Elk Grove Municipal Code Chapter 4.32 "Massage Businesses" was adopted on April 8, 2015, and effective on May 8, 2015, which requires massage providers within the City to obtain State certification through the California Massage Therapy Council.
- B. The City has since recognized that certain massage providers, who have lawfully and legitimately conducted their business for many years within the City, are unable to obtain certification through the California Massage Therapy Council because their completed hours are no longer sufficient for current State certification requirements.
- C. As a result, the City has the authority to permit exemption from the California Massage Therapy Council certification requirement for qualified massage providers, and continue to regulate those providers through municipal regulatory licensing.
- D. To qualify for the California Massage Therapy Council certification exemption, massage providers must have held a City of Elk Grove employee permit or special business license continually for five or more years prior to the effective date of Elk Grove Municipal Code Chapter 4.32, which went into effect on May 8, 2015. Additionally, the massage provider must have no substantiated complaints against their permit or license, and it must be in good standing as of May 8, 2015. The massage provider must maintain a valid, unsuspended and unrevoked employee permit or special business license through the City of Elk Grove, as required under Elk Grove Municipal Code 4.10.
- E. All massage providers who qualify for exemption from the California Massage Therapy Council certification, must comply with all other provisions within Elk Grove Municipal Code Chapter 4.32.
- F. Elk Grove Municipal Code Section 4.10.150 refers to the appeal of revocation or suspension of special business licenses. This section was not updated when Elk Grove Municipal Code Chapter 1.11 "Appeals" was amended in 2013, which amended the time for an appellant to file a request for appeal from thirty (30) days to fifteen (15) days.

- G. Amending Elk Grove Municipal Code Section 4.10.150 to refer to the processes of appeal as described in Elk Grove Municipal Code Chapter 1.11 will keep the code sections consistent as they relate to the appeal process.

Section 3: Amendment to EGMC Title 4 – Business Regulation, Amending Chapter 4.32 Massage Businesses

EGMC Chapter 4.32 “Massage Businesses” is hereby amended to include an exemption for California Massage Therapy Council certification, and to revise existing sections that apply to the California Massage Therapy Council certification requirement, as set forth at Exhibit A, attached hereto and incorporated herein by reference.

Section 4: Amendment to EGMC Title 4 – Business Regulation, Amending Section 4.10.150 Appeal of Revocation or Suspension

Section 4.10.150 of the Elk Grove Municipal Code shall be amended as follows:

4.10.150. Appeal of revocation or suspension.

Following notice of suspension or revocation pursuant to EGMC Section 4.10.145, the holder of the special business license or employee permit may file a written appeal pursuant to EGMC Chapter 1.11.

Section 5: California Environmental Quality Act (CEQA)

Finding: The City Council hereby finds that the adoption of this Ordinance is not a “project” under the California Environmental Quality Act (CEQA) pursuant to sections 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the establishment of any new massage businesses, nor does it authorize the construction of any new structures or other physical changes to the environment. This Ordinance has no potential for resulting in physical change to the environment directly or indirectly in that it prevents change to the environment pending the completion of the contemplated research and studies. Therefore, this action is exempt under sections 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State CEQA Guidelines.

Section 6: No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.


Section 7: Severability.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.


Section 8: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).


**ORDINANCE:** 15-2015  
**INTRODUCED:** July 8, 2015  
**ADOPTED:** July 22, 2015  
**EFFECTIVE:** August 21, 2015

  
\_\_\_\_\_  
GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: July 28, 2015

*Within EGMC Chapter 4.32 Update or Add the following Sections as indicated:*

1. *Under the "Sections" Heading include the entry listing for the new EGMC 4.32.160:*

**Chapter 4.32  
MESSAGE BUSINESSES**

...

4.32.160 CAMTC exemption clause.

...

2. *Update EGMC 4.32.005(L):*

...

**4.32.005 Definitions.**

...

L. "Massage provider" means a certified massage therapist or a certified massage practitioner or a person exempt from obtaining CAMTC certification pursuant to EGMC Section 4.32.160 who administers massage for compensation.

...

3. *Update EGMC 4.32.020(A), (B), (G), and (Q):*

**4.32.020 Operating requirements.**

...

A. Massage businesses shall only employ and/or retain persons to conduct massage services who are certified massage therapists or certified massage practitioners with an active and valid certificate issued by the CAMTC, unless exempt pursuant to EGMC Section 4.32.160.

B. CAMTC certification or a City of Elk Grove massage provider identification card shall be displayed and clearly visible on the massage provider's person during working hours and at all times when the massage is being administered at a massage establishment or during an out-call massage.

...

G. A copy of the CAMTC certificate of each and every massage provider employed by the business shall be displayed in the reception area or similar open public place on the premises. If a massage provider is exempt pursuant to EGMC Section 4.32.160, a valid City of Elk Grove special business license or employee permit shall be displayed in the reception area or similar open public place on the premises.

...

Q. A massage business shall only permit its massage providers to operate under the name specified in his or her CAMTC certificate or City of Elk Grove employee permit. A massage business shall operate only under the name specified in its special business license.

...

5. *Update EGMC 4.32.100:*

## **Article II. Licenses and State Certification**

### **4.32.100 State certification required.**

A. Unless exempt under EGMC Section 4.32.010 or 4.32.160, no person shall practice massage within the City of Elk Grove without a valid, unexpired, unsuspended and unrevoked CAMTC certification issued for a certified massage therapist or certified massage practitioner.

B. No person shall own, conduct or operate a massage business, including, without limitation, an out-call massage service and massage establishment, without requiring that all persons practicing massage in, for, or on behalf of the massage business possess a valid, unexpired, unsuspended and unrevoked CAMTC certificate, unless an exemption applies under EGMC Section 4.32.010 or 4.32.160.

6. *Update EGMC 4.32.125 (A) and (B):*

### **4.32.125 Employee reporting required.**

A. A massage business special business license licensee must notify the Chief of Police, in writing, of the name, address, and CAMTC certification number or City of Elk Grove employee permit number of each massage provider serving as an employee of the massage business within five (5) business days of that person being employed at the massage business.

B. A massage business special business license licensee must notify the Chief of Police, in writing, of the name and CAMTC certification number or City of Elk Grove employee permit number of each massage provider who is no longer an employee of the massage business, within five (5) business days of that person no longer being employed at the massage business.

...

7. Add EGMC 4.32.160:

**4.32.160 CAMTC exemption.**

A. Any person holding a valid, unsuspended and unrevoked City of Elk Grove employee permit or City of Elk Grove special business license issued pursuant to Elk Grove Municipal Code Chapter 4.10 for the purpose of conducting massage or a massage business, and who has held the City of Elk Grove employee permit or special business license continually for five or more years as of the May 8, 2015 effective date of this Chapter, shall be exempt from any provision of this Chapter requiring a CAMTC certificate in order to be a massage provider provided all of the following criteria are met:

1. No substantiated complaints have been lodged with the City of Elk Grove regarding the massage provider under the massage provider's City of Elk Grove employee permit or special business license issued pursuant to EGMC Chapter 4.10; and
2. The massage provider's employee permit or special business license issued pursuant to EGMC Chapter 4.10 was valid and in good standing as of the May 9, 2015 effective date of this Chapter; and
3. The massage provider continues to maintain a valid, unsuspended and unrevoked employee permit or special business license through the City of Elk Grove as required under EGMC Chapter 4.10.

B. All other provisions of EGMC Chapter 4.32 shall be applicable to a CAMTC-exempt massage provider, with the exception of the requirement to obtain a CAMTC certificate.

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 15-2015**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )     ss.  
CITY OF ELK GROVE         )

*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on July 8, 2015 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on July 22, 2015 by the following vote:*


**AYES :**        **COUNCILMEMBERS:**     *Davis, Hume, Detrick, Ly, Suen*

**NOES:**        **COUNCILMEMBERS:**     None

**ABSTAIN:**   **COUNCILMEMBERS:**     None

**ABSENT:**     **COUNCILMEMBERS:**     None

*A summary of the ordinance was published pursuant to GC 36933(c) (1).*

  
\_\_\_\_\_  
Jason Lindgren, City Clerk  
City of Elk Grove, California