

CHAPTER 17. MASSAGE ESTABLISHMENTS, MASSAGE TECHNICIANS, AND THE PRACTICE OF MASSAGE*

* 5-17.01 through 5-17.12, codified from § 2, Ord. 1467-NS, eff. August 18, 2006, repealed by Part 1, Ord. 1577-NS, eff. July 27, 2012.

Sec. 5-17.01. 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. This chapter regulates persons and establishments engaged in the practice of massage therapy in order to protect and promote public health, safety and welfare.

(b) This chapter establishes a local regulatory system that allows only CAMTC certified massage therapists and massage practitioners to operate within the City. This chapter is also intended to allow a transitional period for certain existing massage technicians to continue practicing while they obtain CAMTC certification. All persons who wish to work as a massage therapist or massage practitioner in Thousand Oaks must obtain CAMTC certification on or before December 31, 2012.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.02. 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 this Code, the California Business and Professions Code, or California Government Code.

“California Massage Therapy Council (CAMTC)” means the California Massage Therapy Council created pursuant to California Business and Professions Code Section 4600.5(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.

“Certified sole proprietorship” means any massage business where the owner is the only person employed or used by that business to provide massage services and the owner has a current and valid CAMTC certificate.

“City” means the City of Thousand Oaks.

“Director” means the Finance Director or such other director designated by the City Manager to oversee local massage regulations.

“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.

“Massage establishment” means a parlor, room, place or institution where massage is given or administered by a massage technician.

“Massage technician” means any person, who gives, performs or administers to another person a massage for any form of consideration and shall include certified massage practitioners and therapists as respectively defined in California Business and Professions Code Section 4600 et seq.

“Person” means and includes individuals, firms, corporations, partnerships, associations or other forms of business organization or group.

“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.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.03. Administration.

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

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.04. 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.

(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.

(c) Off-premises 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 massage practitioner or massage therapist.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.05. Massage establishment: Certificate of registration required.

Any person, association, partnership, or corporation desiring to operate a massage establishment must make an annual application for a massage establishment certificate of registration. An application shall be filed on forms provided by the City, submitted under penalty of perjury and shall contain the following information:

(a) CAMTC certification verification:

1. If a certified sole proprietorship, the applicant/owner shall produce a valid and current CAMTC certification.
2. If a massage establishment other than a certified sole proprietorship, the applicant/owners shall produce:
 - i. If applicant/owner is CAMTC certified, a valid and current CAMTC certification; and
 - ii. A statement that the massage establishment shall employ only certified massage practitioners along with copies of valid and current State certificates for all massage technicians employed by or contracted with, or who will be employed by or contracted with the massage establishment and copies of their current and valid CAMTC issued identification cards.

(b) The Police Department may require the owner/applicant of a massage establishment to produce a valid and current driver’s license and/or identification card issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government; and further may require the massage technicians whom the owner/applicant has identified as employees to personally appear and produce valid and current State certificates, a valid and current driver’s license and/or identification card issued by a state or federal governmental agency or other photographic identification bearing a bona fide seal by a foreign government.

(c) Any person, association, partnership, or corporation desiring to operate a massage establishment, that will own or does own five (5%) percent or more of the massage establishment, and that is not a certified massage therapist or certified massage practitioner, must submit an annual application to the City for an investigation of the applicant's background and history. A nonrefundable fee, in an amount set by resolution, must accompany the submission of each application to defray the cost of investigation, inspection and enforcement of this chapter. An annual nonrefundable renewal fee will also be charged to defray associated costs of investigation, inspection and enforcement.

1. Each person applying for a background check must submit the following information:
 - i. The full true name and any other names used by the applicant.
 - ii. The present address and telephone number of the applicant.
 - iii. Driver's license number and social security number.
 - iv. The proposed address of the massage establishment.
 - v. Each residence and business address of the applicant for the five (5) years immediately preceding the date of the application, and the inclusive dates for such address.
 - vi. Written proof that the applicant is at least 18 years of age.
 - vii. Applicant's height, weight, and color of eyes and hair.
 - viii. One photograph of the applicant at least two inches by two inches taken within four months preceding the date of the application. 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(s).
 - ix. All criminal arrests and statement of the dates, places, and disposition of any convictions from said arrests.
 - x. 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 (5%) percent 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 or more partners are a corporation, the provisions of this section pertaining to corporate applicants will apply. The applicant corporation or partnership must designate one 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 application fee will be charged.
 - xi. The full true names and other names used, the present addresses and telephone 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 Director with any changes in the massage technicians that work at the massage establishment during the permit period within 10 working days of each change.
 - xii. The Director may require the applicant to furnish fingerprints when needed for the purpose of verifying identification and obtaining information on applicant's criminal history.
 - xiii. Such other identification and information as may be required by the Director in order to reasonably verify the information to be included in the application.
 - xiv. The City is allowed a reasonable time, not to exceed 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 Director in writing of the findings of the inspection.

2. Background clearance will be issued to the applicant who has furnished all of the information required by this section in the application, provided:

- i. The applicant has not made a material false statement in the application.
- ii. The applicant confirmed in the application 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.
- iii. The applicant, if an individual, or in the case of an applicant which is a corporation or partnership, any of its officers, directors, holders of five (5%) percent or more of the corporation's stock, has not been convicted in a court of competent jurisdiction of any of the offenses currently listed in California Government Code Section 51032 or as said section may be amended in the future, including the following:

Penal Code Sections 243.4; 261; 266a through 266j; 267; 314 to 316; 318; or 647(a, b, d); any offense requiring registration under Penal Code Section 290.001 et seq. or Health and Safety Code Section 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 Sections 11054 to 11058, as amended; or any offense in another state which, if committed in California, would have been punishable as one 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;
- iv. The applicant is at least 18 years of age; and
- v. The applicant has not had a massage technician or massage establishment license or permit suspended within one year or revoked within three 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 suspension or revocation.

3. Appeal of denial to issue massage establishment certificate of registration. An applicant whose massage establishment certificate of registration application was denied due to any of the reasons set forth in Section 5-17.05(c)(2)(i-v) above may appeal such denial by submitting a timely request pursuant to TOMC Section 1-4.01 et seq. and as set forth in this chapter. Failure to make a timely request to appeal the decision to deny the massage establishment certificate of registration waives any further recourse to challenge the decision.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.06. Issuance of massage establishment certificate of registration.

(a) The Director shall issue a massage establishment certificate of registration to any certified sole proprietorship that demonstrates all of the following:

1. That the operation, as proposed by the applicant, if permitted, would comply with all applicable laws, including, but not limited to, the City's building, zoning, business tax, and health regulations.
2. The owner is the only person employed or used by that business to provide massage services.
3. The owner holds a valid and current CAMTC certificate issued pursuant to Chapter 10.5 of the California Business and Professions Code and that the owner/applicant is the same person to whom the CAMTC issued a valid and current State certificate and identification card.
4. That the applicant has not made any material misrepresentations in the application or with respect to any other document or information required by the City within the last five (5) years.

(b) The Director shall issue a massage establishment certificate of registration to a massage establishment other than a certified sole proprietorship that demonstrates the following:

1. That the operation, as proposed by the applicant, if permitted, would comply with all applicable laws, including, but not limited to, the City's building, zoning, business tax, and health regulations.

2. The owner holds a valid and current State certificate issued pursuant to Chapter 10.5 of the California Business and Professions Code and that the owner/applicant is the same person to whom the CAMTC issued a valid and current State certificate and identification card; or

3. All owners/applicants not CAMTC certified have received background clearance per Section 5-17.05 of this chapter.

4. The massage establishment employs or uses only massage technicians whose CAMTC certificates are valid and current.

5. That the applicant has not made any material misrepresentations in the application or with respect to any other document or information required by the City within the last five (5) years.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.07. Display of certificates.

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.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.08. Registration fee.

A registration fee, if any, shall be set by resolution of the City Council and shall be required only for background check for those applicants/owners of a massage establishment who are not CAMTC certified and own five (5%) percent or more of the massage establishment.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.09. Business tax certificates.

All persons shall obtain a business tax certificate where required by the City's business tax provisions. The issuance of massage establishment certificate of registration (individual or business) is a condition precedent to the granting of such a business tax certificate. Upon the issuance of a certificate of registration pursuant to this chapter, the applicant shall apply for and furnish the information necessary to obtain a business tax certificate as required by the provisions of this Code. No business tax certificate shall be issued until the massage establishment certificate of registration has been issued and the business tax, as provided in this Code, has been paid. The business tax shall be commensurate with the business tax charged to other professionals established by this Code.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.10. Prohibited conduct.

It is unlawful for owners of massage establishments or off-premise massage services, or massage technicians, to conduct or allow any of the following activities:

(a) It is unlawful for any massage 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 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.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.11. 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. Lighting. Minimum lighting must be provided in accordance with the California Building Code, as adopted by this Code, and, in addition, at least one unobstructed artificial light of not less than sixty (60) watts must be provided in each enclosed room or booth where massage services are being performed on a patron.

3. Ventilation. Minimum ventilation must be provided in accordance with the California Building Code, as adopted by this Code.

4. 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.

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

6. 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.

7. Dressing and toilet facilities. Separate dressing and separate toilet facilities must be provided for male and female patrons. This condition does not apply to massage establishments that offer foot massage services and provide no other form of massage services or other type of activity regulated by this chapter.

8. 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.

9. 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.

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

11. Any room in which a massage establishment provides massage services may not be used for residential sleeping purposes.

12. 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.

13. 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.

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

(b) Notwithstanding the foregoing, if a massage establishment is located in a facility that does not have private treatment rooms and where all services are performed in a singular, open room, visible to the public, the owner or operator is exempt from having to comply with subsections (a)(5-7) of 5-17.11.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec 5-17.12. Inspection by City officials and notices of violation.

(a) City officials, including the County Health Officer, shall have the right to enter the premises from time to time during regular business hours prior to the issuance of a permit and subsequently for the purpose of making reasonable inspections to enforce compliance with this chapter and with building, fire, electrical, plumbing, and/or

health and safety regulations. In the event a certificate of registration has been issued, it may be revoked or suspended in the manner hereinafter set forth in this chapter.

(b) Whenever City officials make an inspection of a massage business and find that any provision of this chapter has been violated, he or she shall give notice of such violation by means of an inspection report or other written notice. In any such notification, the investigating person shall:

1. Set forth the specific violation or violations found, and shall notify the registered certificate holder that failure to comply with any notice issued in accordance with the provisions of this chapter may result in the revocation or suspension of the permit.

2. The registered certificate holder may be issued a warning that any future violation of this chapter may result in suspension or revocation of the certificate of registration, or the City officials may establish a specific and reasonable period of time for the correction of the violation or violations. No time to correct need be given for any violations addressed in Section 5-17.05 of this Code.

3. The registered certificate holder and operator shall take immediate action to correct violations and City officials may re-inspect the business for compliance.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.13. 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:

(a) Acupuncturists who are duly certified to practice their profession in the State of California.

(b) Barbers, beauticians, and cosmetologists with respect to scalp massage, who are duly permitted pursuant to Business and Professions Code Section 7301 et seq., in accordance with the limitations of their permits.

(c) Nurses, physicians, chiropractors, osteopaths, physical therapists, or other health care professionals who are duly permitted to practice their respective professions in the State of California, or provide professional services in lawful compliance with Corporations Code Section 13401(a).

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.14. 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 any manner provided by law. The City Attorney may seek a court order to grant specified 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.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.15. Revocation.

The Director or City Attorney may revoke approvals issued under this chapter for one or more of the following grounds:

(a) Fraud or deceit. That the applicant practiced fraud or deceit in obtaining an approval under this chapter;

(b) Violation of chapter. That the massage establishment owner, operator, massage technician, or owner's employee violated one or more provisions of this chapter;

(c) 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 including those set forth in California Government Code Section 51032;

(d) 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;

(e) Employment of uncertified technicians. That the massage establishment has employed, allowed or permitted an uncertified person to perform massage in the massage establishment;

(f) Error. That the approval was issued in error;

(g) Civil penalties. Assessment of three or more civil penalties as provided by this chapter during any six month period; or

(h) Prohibited conduct. A massage establishment owner, operator, massage technician, or the massage establishment's employee or agent has been found to have engaged in prohibited conduct in violation of this chapter.

(Part 2, Ord. 1577-NS, eff. 7-27-2012)

Sec. 5-17.16. Notice of revocation.

Upon a determination on the grounds to revoke an approval under this chapter, the Director 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.

(Part 2, Ord. 1577-NS, eff. 7-27-2012)

Sec. 5-17.17. Surrender of massage establishment certificate of registration.

The holder of a massage establishment certificate of registration shall immediately surrender his or her certificate to the Chief of Police upon its revocation.

(Part 2, Ord. 1577-NS, eff. 7-27-2012)

Sec. 5-17.18. Criminal liability, civil liability and penalties.

(a) Any violation of chapter may be prosecuted as an infraction punishable by fine, or as a misdemeanor and punishable by fine or imprisonment, or both, in accordance with Government Code Section 36900 et seq. All violations shall be a misdemeanor unless made an infraction by: (1) the City Attorney filing a complaint in the Superior Court specifying that the offense is an infraction; or (2) the issuing of a citation specifying that the violation is an infraction; or, (3) the City Attorney making a motion in court to reduce a misdemeanor to an infraction if such motion is made prior to the trial on the matter.

(b) Each day a violation of this Code or other ordinance of the City continues shall constitute a separate offense.

(c) Unless otherwise exempted by the provisions of this chapter, every action, whether from a person acting as an individual, owner, employee of the owner, operator, employee, participant, or helper of the operators who gives massages or conducts a massage business, or who, in connection with the business, gives or administers, or practices the giving or administering of, massages or any of the services defined in this chapter, without first obtaining CAMTC certification and/or a massage establishment certificate of registration, or whose actions otherwise violate any provision of this chapter, shall be and is declared to be unlawful and a public nuisance. In addition to or in lieu of prosecuting a criminal action for violations under this chapter, City may commence an action or proceeding for the abatement, removal and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the State of California or the City of Thousand Oaks and may take such other steps, including abatement proceedings to remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter. If an injunction is sought, attorney's fees and costs will be assessed at the discretion of the court against the party subject to said injunction. The City may also seek redress through the City's administrative penalty process for civil penalties pursuant to section 1-2.201 et seq.

(d) Any owner, licensee or manager in charge or in control of a massage establishment who knowingly employs a person who is not in possession of a valid, unrevoked CAMTC certification or who allows such persons

to perform, operate, or practice within such a place of business, shall be guilty of a misdemeanor. In addition to or in lieu of prosecuting a criminal action under this chapter, City may commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law, including any code enforcement procedures established pursuant to the laws of the State of California or the City of Thousand Oaks. City may also take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter. If an injunction is sought, attorney's fees and costs will be assessed at the discretion of the court against the party subject to said injunction. The City may also seek redress through the City's administrative penalty process for civil penalties pursuant to Section 1-2.201 et seq.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)

Sec. 5-17.19. Appeal.

(a) Any person denied approval of a massage establishment certificate of registration under this chapter or a massage establishment owner or operator whose approval has been revoked may appeal the denial or revocation. Such appeal must be in writing and must be filed with the City Manager or designee not more than fourteen (14) days following the mailing of the notice of denial or revocation sent to the applicant or massage establishment owner or operator to the address listed by the applicant or massage establishment owner or operator pursuant to this chapter. The written appeal must contain all reasons and documentary support why the denial or revocation should be overturned. Any successful appeal will result in approval or reinstatement of an approval and refund of any fines collected by the City.

1. The City Manager shall not accept an appeal, and no hearing shall be held, unless the appellant has paid a filing fee, in an amount set by resolution of the City Council, to defray the cost of such appeal. Any appeal without the timely payment of fees shall be considered to be untimely.

2. The scope of the appeal hearing pursuant to this section shall be limited to those issues raised by the appellant in the written appeal, as submitted pursuant to division (a) of this section.

(b) City Manager action.

1. Upon receipt of a timely filed appeal, the City Manager or designee shall set the matter for hearing which shall be held not fewer than ten calendar days nor more than 30 calendar days from the date of the appeal request. The hearing may be continued from time to time upon the mutual consent of the parties.

2. The appellant shall be provided with notice of the time and place of the appeal hearing, as well as a copy of all relevant materials at least seven calendar days prior to the hearing.

3. At the time of such hearing, the City Manager shall review the records and files relating to the decision.

4. The City Manager shall permit any interested person to present any relevant evidence bearing on the issues involved in the matter.

5. In conducting the hearing, technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and if it is evidence customarily relied upon by responsible persons in the conduct of their affairs regardless of the existence of any common law or statutory rule which might make admission of such evidence improper over objection in civil actions. Hearsay evidence may be admissible if it is the sort upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The rules of privilege shall be applicable to the extent they are permitted in civil actions. Irrelevant, collateral, and repetitious testimony shall be excluded.

6. The appellant shall have the burden of proving that he or she meets the requirements for issuing the certificate in the first instance; the City shall have the burden in proving that grounds exist for revoking or failing to renew a certificate.

7. Based upon the evidence presented at the hearing, the City Manager shall determine whether the decision should be affirmed, modified or reversed.

8. The City Manager's decision shall be communicated in writing to the appellant within seven calendar days after the close of the hearing and submission of the matter to the City Manager for decision. The City Manager's decision shall state whether the decision is affirmed, modified or reversed and shall state the reasons therefor.

9. The decision of the City Manager shall include notice that the decision is final and conclusive, that judicial review may be sought therefrom pursuant to California Civil Procedure Code Section 1094.5, and that any action filed in the superior court shall be filed within 90 days following the City Manager's notice pursuant to California Civil Procedure Code Section 1094.6.

(Part 2, Ord. 1577-NS, eff. July 27, 2012)