



Town Council Agenda Report

Date: August 11, 2020 Item No. 5
To: Honorable Mayor and Town Council
Subject: SECOND READING OF ORDINANCE 531 OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING SECTIONS 9.08 AND 9.36.030 AND ADDING CHAPTER 5.03 TO TITLE 5 OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE RELATING TO THE REGULATION OF MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS
From: Douglas Robertson, Town Manager
Submitted by: Lori Lamson, Assistant Town Manager
Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

Adopt Ordinance No. 531

SUMMARY:

At its July 28, 2020 meeting, the Town Council reviewed and introduced Ordinance No. 531 that amends Title 5 and Tile 9 pertaining to massage establishments. The amendment establishes regulations for massage establishments and technicians. Ordinance No. 531 has been scheduled for adoption at the August 11, 2020 Town Council Meeting.

Fiscal Impact:

Not Applicable

Attachments:

Ordinance No. 531

ORDINANCE NO. 531

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY BY AMENDING SECTIONS 9.08 AND 9.36.030 AND ADDING CHAPTER 5.03 TO TITLE 5 OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE RELATING TO THE REGULATION OF MASSAGE ESTABLISHMENTS AND MASSAGE TECHNICIANS

WHEREAS, the Town of Apple Valley (“Town”) is a municipal corporation, duly organized under the constitution and laws of the State of California to protect the public health, safety, and welfare; and

WHEREAS, in 2008, the Legislature adopted Senate Bill 731, which created the California Massage Therapy Council (“CAMTC”), a state-organized nonprofit organization with regulatory authority over the certification of massage practitioners throughout the State of California; and

WHEREAS, Senate Bill 731 limited local regulatory authority over massage establishments so long as the establishment exclusively hired State-certified massage technicians, thereby preempting most local licensing and permitting requirements and land use regulations relating to massage parlors and massage technicians; and

WHEREAS, the Town amended the Apple Valley Municipal Code to comply with the regulations set forth in Senate Bill 731; and

WHEREAS, Senate Bill 731 has been widely criticized by local agencies as providing massage businesses with unprecedented protection from local zoning and land use authority, and interfering with local law enforcement efforts to close massage businesses that allow prostitution and other illegal activities; and

WHEREAS, as a result of Senate Bill 731, many communities in California experienced a proliferation of massage establishments; and

WHEREAS, the increased number of massage establishments that have located in the Town have resulted in an increase of Police and Code Enforcement calls for service to many of those massage establishments. Some of those establishments are suspected of allowing sexually explicit activity to take occur on the premises, including prostitution; and

WHEREAS, in recent years, instances of illicit sexual activity, prostitution, and human trafficking have been reported in massage establishments throughout California (“Over 3,300 California massage parlors are fronts for sex trafficking, report says,” *SFGate.com*, Feb. 3, 2018; “Huntington Beach woman pleads guilty to pimping women at massage parlors,” *LATimes.com*, Jun. 28, 2018; “San Gabriel woman arrested on suspicion of human trafficking at massage parlors,” *The San Gabriel Valley Tribune*, Oct.

24, 2018; “Sex trafficking victims caught in illegal massage parlor industry,” *NBCSanDiego.com*, Nov. 8, 2018; “Deputies raid Pico Rivera massage parlors, arresting 3 women suspected of prostitution,” *Whittier Daily News*, Jan. 17, 2019; “LA prosecutors sue 2 San Fernando Valley massage parlors over allegations of prostitution, human trafficking,” *LA Daily News*, May 28, 2019); and

WHEREAS, according to a non-profit Polaris report, “Human Trafficking in Illicit Massage Businesses,” January 2018, there are more than 9,000 illicit massage parlors in America that collectively take in approximately \$2.5 billion in annual revenue. Because of the large profits that illicit massage businesses stand to make, a number of those businesses have little incentive to operate lawfully. As a result, local governments must turn to other solutions to curb illegal activity at massage establishments, such as enacting business regulatory frameworks; and

WHEREAS, the illicit and illegal activities detailed in the above recitals and the many reports of nuisance conditions and sexual misconduct, including prostitution and human trafficking, at massages establishments within the Town, County, and throughout the State pose an immediate threat to the public peace, health and safety; and

WHEREAS, in 2014, Assembly Bill 1147 was adopted in response to criticism against Senate Bill 731. Assembly Bill 1147 amended state law to allow local agencies to impose reasonable zoning, business licensing, and health and safety requirements on massage establishments; and

WHEREAS, in 2016, the adoption of Assembly Bill 2194 further amended state law to extend the sunset date of the CAMTC until 2021 and made other technical and clarifying changes to limit local governments to the imposition and enforcement of only reasonable and necessary fees and regulations on massage businesses and massage establishments; and

WHEREAS, the Town is also authorized by Government Code Section 51030 et seq., to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage technicians, and reasonable conditions on the operation of the massage establishments; and

WHEREAS, the public peace, health, safety, and welfare require revisions to the Apple Valley Municipal Code relating to massage establishments and massage technicians to ensure that nuisance activities occurring at massage establishments in the Town are properly regulated and cease; and

WHEREAS, the Town Council now wishes to amend the Apple Valley Municipal Code to ensure that the Town regulates massage establishments in compliance with the current law while recognizing the need to protect legitimate business owners and massage professionals; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Chapter 5.03 is hereby added to Title 5 of the Apple Valley Municipal Code to read in its entirety as follows:

Chapter 5.03 MESSAGE ESTABLISHMENT AND MESSAGE TECHNICIANS

5.03.010 Purpose and Intent.

In enacting this Chapter, the Town of Apple Valley recognizes that commercial massage therapy is a professional pursuit which can offer the public valuable health and therapeutic services. The Town further recognizes that, unless properly regulated, the practice of massage therapy and the operation of massage establishments is frequently associated with unlawful activity that can pose a significant threat to the health, safety, and welfare of the local community. Accordingly, it is the purpose and intent of this Chapter to protect the Town's residents by providing for the orderly regulation of establishments providing massage therapy services, discouraging prostitution and other related illegal activities carried on under the guise of massage therapy, and establishing certain sanitation, health, and operational standards for massage establishments.

5.03.020 Definitions.

The following words as used in this Chapter shall have the meaning attached to them in this Chapter unless otherwise clearly apparent from its context:

- (a) CAMTC Certificate means a certificate issued by the California Massage Therapy Council to a person who has obtained the right to use the title Certified Massage Therapist or Certified Massage Practitioner.
- (b) Cosmetology Establishment means an establishment which is licensed pursuant to all applicable Federal, State and local laws, rules and regulations to provide primarily the following types of services: (1) shaving or trimming the beard or cutting the hair of a person; (2) giving facial and scalp massages or treatments to a person; (3) shampooing, arranging, dressing, curling, waving, relaxing, permanent waving, coloring or straightening the hair of a person; (4) removing superfluous hair from the body of any person by the use of depilatories, tweezers or chemicals; and (5) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.
- (c) Certified Massage Therapist or Certified Massage Practitioner means any person who administers massage upon another human being in exchange for anything of value whatsoever while in possession of a valid CAMTC Certificate.
- (d) Massage means and includes any method of treating or manipulating the external parts of the human body for remedial, hygienic, relaxation or any other purpose, whether by means of pressure on, friction against or rubbing, touching, stroking,

tapping, kneading, pounding, vibrating, soft tissue manipulation and movement education or other manner of touching external parts of the human body with the hands or by means of an instrument, such as any mechanical or electrical apparatus or appliance, with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powders, creams, ointment or other similar preparations commonly used in this practice.

- (e) Massage Establishment means any business wherein any person, firm, association, partnership, corporation, or combination of the same engages in, conducts, carries on or permits to be engaged in, conducted or carried on, for money or any other consideration whatsoever, the administration to another person of a massage or a bath or health treatment involving a massage. "Massage Establishment" shall not include Cosmetology Establishments. The fact that a business utilizes independent contractors rather than employees shall not exclude it from the definition of "Massage Establishment."
- (f) Operator means all persons who have an ownership interest in a Massage Establishment or a Cosmetology Establishment and who are responsible for the day to day operations of the establishment.
- (g) Unlicensed Massage Technician means any person who administers massage upon another human being in exchange for anything of value whatsoever without a valid CAMTC Certificate.

5.03.030 Business License - Required/Fee.

- (a) Each Massage Establishment shall obtain a business license and pay the required fees in accordance with Chapter 5.02.
- (b) Each Certified Massage Therapist operating as an independent contractor shall obtain a business license and pay the required fees in accordance with Chapter 5.02.

5.03.040 CAMTC Certification and Local Registration Required/ Fee.

- (a) Individuals. It shall be unlawful for any person to practice massage therapy for compensation as a sole proprietorship or employee of a massage business or in any other capacity within the Town of Apple Valley unless that individual is a Certified Massage Practitioner.
- (b) Businesses. It shall be unlawful for any business to provide massage for compensation within the Town of Apple Valley unless all individuals employed by the massage establishment to perform massage, whether as an employee, independent contractor, or sole proprietorship, are Certified Massage Practitioners and said establishment has obtained a valid Town registration certificate as provided in this Chapter.
- (c) Fee. Each applicant shall pay a nonrefundable fee, in an amount determined by Resolution of the Town Council, at the time they submit a Business License and Massage Registration Certificate application or renewal application under this

section. The application fee is for the purpose of defraying the expense of investigation, administration and issuance of said Massage Business Registration.

5.03.050 Massage Business Registration.

- (a) Application. The registration application for a Town Registration Certificate shall include all of the following:
- (1) Full name and any aliases heretofore used or currently used, and current addresses of the Operator(s), and applicant if different;
 - (2) Written proof that the Operator(s), and applicant if different, is over the age of eighteen years;
 - (3) The business, occupation, or employment of the Operator(s), and applicant if different, for five (5) years immediately preceding the date of the application;
 - (4) Any Massage or similar Business License history of the Operator(s), and applicant if different, including whether such Person, in previous operation, in this or another area, has had his or her license revoked or suspended, the reason therefor, and any business activity or occupation subsequent to the action of suspension or revocation;
 - (5) A full list of all Licensed Massage Technicians who will practice at the premises. For each Licensed Massage Technician listed, applicant shall provide the current CAMTC Certificate number and a copy of the CAMTC Certificate;
 - (6) A list of each person permitted to act as the on-duty manager of the Massage Establishment and a statement, signed and dated by each such designated manager, certifying under penalty of perjury that they: (1) have received a copy of this Chapter; (2) understand its contents; and (3) understand the duties of a manager as provided in this Chapter;
 - (7) Evidence that the Operator(s) has obtained insurance issued by an insurance company authorized to do business in the State of California under a liability insurance policy providing minimum coverage of \$500,000.00 for injury or death to one person arising out of the operation of any massage business and the administration of a massage;
 - (8) A list of employees who are not Licensed Massage Technicians for purposes of performing a Live Scan with the California Department of Justice;
 - (9) The signature of all Operator(s) on the completed application;
 - (10) Floor Plan;
 - (11) Operation Statement; and
 - (12) List of Services.
- (b) Issuance. Upon provision of the foregoing required documentation, the Finance Department shall issue the Massage Establishment a Town Registration Certificate coupled with the required Business License and renewed annually, consistent with this Title.
- (c) No application will be accepted or approved for a location where a previous Business License and Registration Certificate was revoked.
- (d) Amendment. A massage establishment shall apply to the Town to amend its Town registration certificate within 30 days after any change in the registration information, including, but not limited to, the hiring or termination of Certified Massage Practitioners, or changes in the owner's addresses and/or telephone numbers.

- (e) Renewal. A massage establishment shall apply to the Town to renew its Town Business License and Registration Certificate at least 30 days prior to the expiration. If an application for renewal of a Town Registration Certificate and all required information is not received in a timely manner and the certificate expires, no right or privilege to provide massage shall exist.

5.03.050 Display of Certificates.

Every Person to whom a Massage Parlor Permit has been granted shall display the Permit and the current CAMTC Certificate held by each and every Licensed Massage Technician employed therein in a conspicuous place at the premises. Every Operator shall report in writing to the Town any change in the Licensed Massage Technicians permitted to provide services at the Massage Parlor. The report shall contain the name of the employee and the date of hire or termination. The report shall be made within five days of the date of hire or termination. All employees, independent contractors, and Licensed Massage Technicians at the Massage Parlor premises shall be required to wear name tags identifying the individual's name and indicating clearly whether such person is a Licensed Massage Technician. If the person is a Licensed Massage Technician, the name on the name tag shall match the name on the CAMTC Certificate.

5.03.060 Change of Location.

A Massage Establishment Certificate shall be specific to the premises referenced on the application. A change of location of Massage Establishment shall not be approved by the Town. The relocation of an existing business will be subject to a new application.

5.03.070 Operating Requirements.

No person shall engage in, conduct, carry on, or permit any massage within the Town of Apple Valley unless all of the following requirements are met:

- (a) A readable sign in compliance with this Code shall be posted at the main entrance identifying the business as a massage establishment. The sign and the front of the business shall not be illuminated by strobe or flashing lights.
- (b) The hours of operation must be posted in the front window, clearly visible from the outside. The maximum hours of operation for any Massage Establishment shall be from 7:00 a.m. until 10:00 p.m. daily. At no time shall a massage be allowed to continue beyond 10:00 p.m. Patrons of the Massage Establishment may not be permitted to remain on the premises outside these hours of operation.
- (c) A list of services available and the cost of such services, font size 12 or larger letters, shall be posted in a conspicuous public place within the premises. Only those services listed may be performed. Nothing in this subsection shall preclude the operator from posting additional signs in other languages as long as at least one sign is posted in English pursuant to this subsection.
- (d) Minimum lighting shall be provided in accordance with the Uniform Building Code. Additionally, at least one artificial light of not less than forty watts shall be provided in each enclosed room or booth where massage services are being rendered.
- (e) Minimum ventilation shall be provided in accordance with the Uniform Building Code.
- (f) Adequate equipment for disinfecting and sterilizing any instruments used for massage shall be provided. Said equipment shall be available to Certified Massage Therapists at the locations where massage is performed. All instruments and equipment shall be appropriately disinfected and sterilized prior to use.

- (g) Hot and cold running water shall be available at all times.
- (h) Closed cabinets shall be utilized and adequately identified for the storage of clean linen. Soiled linen shall not be stored in the same location as clean linen. Soiled linen shall be stored separately and clearly identified as such.
- (i) Adequate dressing and toilet facilities shall be provided for the patrons. Such facilities shall be equipped with adequate locking devices and include at least one toilet and a separate washbasin, supplied with soap or detergent and hot running water at all times and shall be located within close proximity to the area devoted to the performing of massage services. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the restroom hand wash sink. No bar soap may be used. A trash receptacle shall be provided in each toilet room.
- (j) All walls, ceilings, floors, steam or vapor rooms, and all other physical facilities for the Massage Establishment shall be kept in good repair. All physical facilities shall be cleaned and sanitized daily and maintained in a clean and sanitary condition at all times.
- (k) Clean and sanitary towels and linens shall be provided for patrons receiving massage services. No common use of towels or linens shall be permitted. Towels and linen shall be laundered or changed promptly after each use.
- (l) Beds, floor mattresses, and waterbeds shall not be located at the premises.
- (m) A separate locker, capable of being locked, shall be provided at no extra charge for each patron served.
- (n) No person or persons shall be allowed to live inside the Massage Establishment at any time. No food of any kind shall be prepared for sale or sold in the business unless an appropriate public health permit is granted by San Bernardino County.
- (o) No person shall enter, be in or remain in any part of the Massage Establishment while in possession of, consuming, using, or under the influence of any alcoholic beverage or controlled substance. The operator(s) and on-duty manager shall be responsible to ensure that no such person shall enter or remain upon the premises. Service of alcoholic beverages shall not be permitted.
- (p) All patrons shall be provided clean, sanitary and opaque coverings capable of covering the patrons' specified anatomical areas.
- (q) No Massage Establishment shall place, publish or distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services described in this Chapter (including those massage techniques recognized by the California Massage Therapy Council as legitimate). Nor shall any massage Establishment employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this Chapter and all applicable law.
- (r) Massage Establishments shall comply with all State and Federal laws and regulations for handicapped customers. No operator or Certified Massage Therapist may discriminate or exclude patrons on the basis of their race, sex, religion, age, handicap or any other classification protected under Federal or State laws, rules or regulations.
- (s) All front, reception, hallway or front exterior doors (except back or exterior doors used solely for employee entrance to and exit from the massage establishment) shall

be unlocked during business hours, except as may be permitted by applicable law (such as the Uniform Fire Code or Government Code Section 51034) which allows for safety doors which may be opened from the inside when locked. Whenever the Massage Establishment is open, staff shall be available to assure security for clients and staff who are behind closed/unlocked doors. No massage may be given within any cubicle, room, booth or any area within a massage establishment which is fitted with a lock of any kind (such as a locking door knob, padlock, dead bolt, sliding bar or similar device), unless the only door is an exterior door. Entry doors to any room shall not be obstructed by any means.

- (t) No persons other than operator(s), Certified Massage Therapists, and customers shall be permitted anywhere in the Massage Establishment other than the lobby/reception area during the hours of operation.
- (u) No Certified Massage Therapist or other person on the premises may engage in any massage technique not recognized by the California Massage Therapy Council as legitimate. No Certified Massage Therapist or other person on the premises may engage in unprofessional conduct, as that term is described in Business and Professions Code Section 4609 (a)(1), which includes sexually suggestive advertising related to massage services, engaging in any form of sexual activity on the premises, providing massage of the genitals or anal region, and providing massage of female breasts without the written consent of the person receiving the massage and a referral from a licensed California health care provider.
- (v) Certified Massage Therapists and all other employees of the Massage Establishment shall comply with the dress code requirements imposed on Certified Massage Therapists under Business and Professions Code Section 4609 (a)(10), which prohibits: (1) attire that is transparent, see-through, or substantially exposes the certificate holder's undergarments; (2) swim attire, if not providing a water-based massage modality approved by the council; (3) dressing in a manner that exposes the certificate holder's breasts, buttocks, or genitals; (4) dressing in a manner that constitutes a violation of Section 314 of the Penal Code; and (5) dressing in a manner that is otherwise deemed by the council to constitute unprofessional attire based on the custom and practice of the profession in California.
- (w) The operator or on-duty manager shall post, on a daily basis, the name of each on-duty manager in a conspicuous public place in the lobby of the massage establishment. The operator, and the on-duty manager in the operator's absence, shall be responsible for ensuring compliance with this Chapter. The operator and any on-duty manager shall be responsible for the conduct of all employees while the employees are on the premises.
- (x) At least one Certified Massage Therapist shall be on the premises and on duty at all times when the business is open.
- (y) No Massage Establishment shall allow any person to provide massage service who is not a Certified Massage Therapist.
- (z) Each Massage Establishment shall post CAMTC Certificates of Licensed Massage Technicians and require all persons working at the Premises to wear name tags.

5.03.080 Inspection by Officials.

The investigating and enforcing officials of the Town of Apple Valley, including but not limited to the Police Department, Public Health Officer and Code Enforcement Manager, or their designees, shall have the right to enter the premises from time to time during

regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to enforce compliance with applicable regulations, laws, and statutes, and with the provisions of this Chapter. The massage business may be charged a fee for any safety and compliance inspections.

5.03.090 Exemptions.

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties:

- (a) 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.
- (b) Barbers and cosmetologists 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.
- (c) 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.
- (d) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.
- (e) 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.
- (f) Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:
 - (1) The massage services are made equally available to all participants in the event;
 - (2) 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;
 - (3) The massage services are provided at the site of the event and either during, immediately preceding or immediately following the event;
 - (4) The sponsors of the event have been advised of and have approved the provisions of massage services;
 - (5) The persons providing the massage services are not the primary sponsors of the event.

5.03.100 – Violations and Grounds for Revocation

- (a) A massage establishment Business License and Registration Certificate may be revoked as set forth in Section 5.03.110 on one or more of the following grounds:
 - (1) That the holder is guilty of fraud or deceit in her or his application for a license of certificate;

- (2) That the holder is permitting the practice of massage in a manner intended to arouse, appeal to, or gratify the lust or passions or sexual desires of another, or that the holder is permitting the practice of medicine without a license or engaging in other similar unauthorized practices;
 - (3) That the holder has been convicted in a court of competent jurisdiction of a felony or a crime of moral turpitude. The conviction of a felony shall include the conviction of an offense which, if committed within the State, would constitute a felony under the laws thereof;
 - (4) That the holder has employed, allowed or permitted an Unlicensed or Uncertified Massage Therapists to perform massage at the premises; or
 - (5) That the holder has failed to maintain the premises in accordance with the operational requirements.
- (b) Upon revocation of a Massage Establishment Certificate, the massage establishment shall immediately cease operation and no other massage establishment shall be permitted to operate at that location by any person for a period of ten (10) years. If the operator is not also the legal owner of the real property on which the massage establishment is situated, notice of such revocation and the period of prohibition shall be provided by the Finance Director or their designee to the owner of record of the property as shown on the latest county assessment roll.
- (c) Notwithstanding the foregoing, the violation of any provision of this Chapter may be subject to enforcement in accordance with Chapter 1.01 of this Municipal Code. Town Code Enforcement Officers may require that operators of Massage Establishments and Certified Massage Therapists comply with the provisions of this Code by immediately abating certain conditions to protect the public health, safety, and welfare in accordance with appropriate and applicable State law.

5.03.110 Revocation and Appeal.

If any Person holding a Certificate to carry on the business of a Massage Establishment, as provided in this Chapter, shall conduct or carry on such business contrary to the provisions of this Chapter or any other law relating to or regulating such business, including Chapter 1.01 of this Code, it shall be subject to suspension, revocation, and any other penalty permitted under this Code.

No Massage Registration Certificate shall be suspended or revoked until after a hearing has been conducted before the Town Manager relating to such suspension or revocation. Notice of such hearing shall be given in writing and shall be served at least ten days prior to the date of the hearing thereon, which notice shall state the grounds of complaint against the holder of such Certificate, or against the business carried on by her or him and shall also state the time when and the place where such hearing will be held. Such notice shall be served upon the holder of such Certificate by delivering the same to such Person, his manager or agent, or to any Person in charge of, or employed in the place of business of such licensee or by leaving such notice at the place of business or residence of such Person with some Person of suitable age and discretion. In the event the holder of such license cannot be found, and a service of such Notice cannot be made upon him or her in the manner herein provided, then a copy of such notice shall be mailed, postage

fully prepaid, addressed to such holder or such licensee at his place of business or residence at least ten days prior to the date of such hearing.

5.03.120 Abatement.

Any Massage Establishment, or Cosmetology Establishment in which incidental massage services are performed pursuant to this Chapter, that is operated, conducted, or maintained contrary to the provisions of this Chapter shall be declared to be unlawful and a public nuisance. The Town Attorney or the District Attorney may, in addition to or in lieu of prosecution in a criminal action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal, and enjoinder thereof, in the manner provided by law. They shall also take such other steps, and shall apply to such courts or court as may have jurisdiction to grant such relief, as will abate or remove such Massage Establishment or Cosmetology Establishment and restrain and enjoin any person from operating, conducting, or maintaining a Massage Establishment or Cosmetology Establishment contrary to the provisions of this Chapter.

5.03.130 Severability.

This Chapter and the various parts, sections and clauses thereof are declared severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid, the remainder of this Chapter shall not be affected thereby. The Town Council declares that it would have passed this Chapter and each part thereof, regardless of the fact that one or more parts thereof be declared unconstitutional or invalid.

SECTION 3. Section 5.02.290 of Chapter 5.02 of the Apple Valley Municipal Code is hereby amended in its entirety to read as follows:

“5.02.290 – Reserved. ”

SECTION 4. Subdivision B.7. of Section 9.36.030 (Adult Businesses) of Chapter 9.36 of the Apple Valley Municipal Code is hereby amended in its entirety to read as follows:

“7. Reserved. ”

SECTION 5. Subdivision G under the definition of Adult-Oriented Businesses in Chapter 9.08 (Definitions) of the Apple Valley Municipal Code is hereby amended in its entirety to read as follows:

“G. Reserved. ”

SECTION 6. CEQA This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Town Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can

be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with the Town's CEQA Guidelines.

SECTION 7. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council of the Town of Apple Valley hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 8. Effective Date. This Ordinance shall become effective thirty (30) days after the date of its adoption.

SECTION 9. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under section 36933 of the Government Code of the State of California.

APPROVED, AND ADOPTED by the Town Council of the Town of Apple Valley, California, at a regular meeting held on the 11th day of August 2020 by the following vote:

Scott Nassif, Mayor

Attest:

La Vonda M-Pearson, Town Clerk

Approved as to form:

Approved as to content:

Thomas A. Rice, Town Attorney

Douglas B. Robertson, Town
Manager