

City of Calistoga

Staff Report

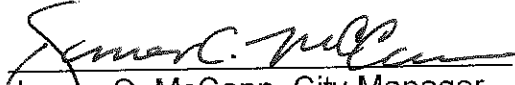
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46

**TO:** Honorable Mayor and City Council  
**FROM:** Jonathan Mills – Chief of Police  
**DATE:** November 3, 2009  
**SUBJECT:** Presentation regarding a proposed Ordinance to require permitting for elder and/or dependent adult caregivers.

---

---

**APPROVAL FOR FORWARDING:**

  
James C. McCann, City Manager

---

---

**ISSUE:** Receive presentation from Investigator Jane Hinshaw of the Napa County District Attorney's Office and Betty Rhodes of the Napa County Commission on Aging regarding a proposed ordinance to require permitting of elder and/or dependent adult caregivers.

**RECOMMENDATION:** Receive presentation, discuss and provide direction.

**BACKGROUND/DISCUSSION:** Over the past four years, the Napa County Commission on Aging has been working on a plan to ensure the safety and security of all elders and/or dependent adults (persons with disabilities) who rely on others to care for them in their own homes. The Commission asserts that elders and dependent adults are deserving of special protection. This Commission noted that, while permits and background screening are required of masseuses, taxi and limousine drivers, they are not required for individuals and agencies receiving compensation to care for the County's most vulnerable population. Many elders and dependent adults have mental or physical impairments that make them less able to protect themselves, to understand and report criminal conduct, or to testify in court proceedings on their own behalf. Crimes against elders and dependent adults (like crimes against children) are particularly destructive given the mental and physical impairments they face, and especially because the victim's ability to recover from harm is significantly diminished. Perpetrators of crimes against elders and/or dependent adults specifically target elders and/or dependent adults due to their diminished capacity and the fact that many have assets.

47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75

The Commission has prepared a comprehensive plan for the permitting of caregivers within Napa County. Under the proposed plan, all caregivers within the County would be required to obtain a permit in order to work with elder and dependent adults. The plan requires caregiver applicants to apply for a permit with a local non-profit agency. The non-profit agency would complete a screening process of the applicant (through the use of a contracted industry background company). Applicants who successfully pass the screening process would have their names and information sent to the Napa County Clerk-Recorder's office who would issue the permit. Permits would be valid for a period of one year, at which time the caregiver would need to apply for a renewal.

In order to implement this program, the City would need to adopt an ordinance, a draft of which is attached. This proposal has been discussed with a large cross-section of the local community, including the Sheriff's Department, the Clerk-Recorder, County Counsel, the County Risk Officer, Health & Human Services Older Adult Division, District Attorney's Office, private (for profit) home care agencies and several non-profit agencies. Suggestions from those agencies have been incorporated into this proposal and there have been no strenuous objections noted. Home health care is a growing business and its largely unregulated nature is recognized as a risk

**FISCAL IMPACT:** There is no associated cost to the City for enacting the proposed ordinance. The cost of the background check and permit would be paid by the applicant. The cost of administering the program would be partially covered by federal funds and county in-kind match.

**ATTACHMENTS:**  
1. Draft County Ordinance

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE AMENDING TITLE 5, OF THE NAPA COUNTY CODE BY  
ADDING A NEW CHAPTER 5.60 RELATING TO REQUIREMENTS FOR  
PERMITS FOR ELDER AND/OR DEPENDENT ADULT CAREGIVERS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39

WHEREAS, the County of Napa joins the State in declaring that elders and dependent adults, as explained in Penal Code section 368(a), deserve special protection, and;

WHEREAS, elders and dependent adults may have mental or physical impairments that make them less able to protect themselves, to understand and report criminal conduct, or to testify in court proceedings on their own behalf; and

WHEREAS, crimes against elders and dependent adults are particularly destructive given the mental and physical impairments they face, particularly because their ability to recover from the harm is significantly diminished; and

WHEREAS, the types of abuses committed against elders and dependent adults include financial abuse, physical abuse, neglect, isolation, false imprisonment, and mental abuse; and

WHEREAS, perpetrators of crimes against elders and dependent adults specifically target elders and dependent adults;

WHEREAS, perpetrators commonly purport to befriend the elder and dependent adult to deceive that person; and

WHEREAS, perpetrators of crimes against elders and dependent adults are frequently persons whom the elder or dependent adult knows and trusts, including persons who are employed to perform home services or in-home services; and

WHEREAS, perpetrators of crimes against elders and dependent adults often have criminal records, which if made known would signal that they are more likely to abuse elder and dependent adults; and

WHEREAS, the regulation of persons who provide home services or in-home services to elders and dependent adults would protect elders and dependent adults from such predators; and

WHEREAS, the Board of Supervisors of the County of Napa finds and declares that the purpose of this ordinance is:

(1) to protect the health and welfare of elders and dependent adults;

(2) to ensure that persons who serve in a position of trust by providing home services or in-home services to elders and dependent adults have not committed crimes which signal the potential for abuse; and

(3) to give elders and dependent adults the knowledge that the person whom they employ has, at a minimum, been subject to a background check.

The Board of Supervisors of the County of Napa, State of California, ordains as follows:

**SECTION 1.** A new Chapter 5.60 (Permits For Elder and/or Dependent Adult Caregivers) is hereby added to the Napa County Code to read in full as follows:

40  
41 **Chapter 5.60**  
42

43 **PERMITS FOR ELDER AND/OR DEPENDENT ADULT CAREGIVERS**  
44

45 **Sections:**

46 **5.60.010 Definitions**  
47 **5.60.020 Permit -- Required**  
48 **5.60.030 Permit -- Application**  
49 **5.60.040 Permit -- Fee**  
50 **5.60.050 Permit Issuance or Denial; Grounds for Denial**  
51 **5.60.060 Permit -- Right to Appeal**  
52 **5.60.070 Permit -- Limited Caregiver Permit**  
53 **5.60.080 Threatening, Coercing, Intimidating, or Using Undue Influence -**  
54 **Prohibited**  
55 **5.60.090 Permit—Update and Renewal**  
56

57 **5.60.010 Definitions**

58 "Caregiver" means any person that provides personal and domestic services for  
59 compensation or any form of consideration.

60 "Caregiver Coordinator" means the County designated organization that accepts  
61 caregiver permit applications, forwards applications to the Industry Specialist for background  
62 checks, and notifies applicants and the County of applicant status.

63 "Caregiver permit" means a permit to work for profit as an elder and/or dependent adult  
64 caregiver. The permit is valid for a period of one year with additional one year renewals  
65 available.

66 "Dependent Adult" has the same meaning as used in Penal Code section 368 (any person  
67 between the ages of 18 and 64, who has physical or mental limitations which restrict his or her  
68 ability to carry out normal activities or to protect his or her rights, including, but not limited to,  
69 persons who have physical or developmental disabilities or whose physical or mental abilities  
70 have diminished because of age. "Dependent adult" includes any person between the ages of 18  
71 and 64 who is admitted as an inpatient to a 24-hour health facility.)

72 "Disqualifying Crimes" means a list of criminal offenses that disqualifies an applicant  
73 from obtaining a Caregiver permit. The list shall be adopted by resolution on the date this  
74 Ordinance is passed and may be amended by adoption of subsequent resolutions.

75 "Elder" has the same meaning as used in Penal Code section 368 (any person who is 65  
76 years of age or older).

77 "Elder and/or Dependent Adult Home Service Business" means any business for profit  
78 which employs, arranges, or contracts for one or more persons to perform personal or domestic  
79 services for elders and/or dependent adults.

80 "Home services" or "in-home services" means providing personal services to an elder  
81 and/or dependent adult, or personal services and domestic services in the elder and/or dependent  
82 adult's temporary or permanent place of residence, which are intended to enable that individual  
83 to remain safely and comfortably in his or her own residence.

84 "Industry Specialist" means a private company who enters a contract with the Caregiver  
85 Coordinator to perform the background checks on individuals applying for a caregiver permit.

86 "Limited caregiver permit" means a permit to work for profit as an elder and/or  
87 dependent adult caregiver for a single elder and/or dependent adult only (rather than for multiple  
88 clients).

89 "Personal and domestic services" includes the following services for elders and/or  
90 dependent adults: domestic services performed on a regular basis multiple times each week such  
91 as housework, meal preparation, meal clean-up, laundry, grocery and other essential shopping,  
92 other errands, heavy house or yard cleaning; and/or personal services performed on a regular  
93 basis multiple times each week such as bathing, oral hygiene, grooming, dressing, feeding,  
94 assistance with ambulation and/or transfers, care and assistance with medical apparatus, taking  
95 an elder and/or dependent adult to and from medical appointments, or any other daily activity for  
96 which the elder or dependent adult needs the assistance of another, or any other similar acts.

97 "Public Authority" has the same meaning as used in Welfare and Institutions Code  
98 section 12301.6.  
99

#### 100 **5.60.020 Permit -- Required**

101 A. It is unlawful for any person to act as an elder and/or dependent adult caregiver  
102 without a caregiver permit. This section shall not apply to persons who are registered nurses,  
103 licensed vocational nurses, nurse practitioners, physician assistants, certified nursing assistants,  
104 physical therapists, certified home health aides, or similar occupations for which the person  
105 already possesses a valid and current state license or state certificate and has passed a state and  
106 FBI background check.

107 B. It is unlawful for any person to operate an elder and/or dependent adult home  
108 service business unless all caregiving employees have obtained a caregiver permit.

109 C. This section does not apply to a county board of supervisors, a public authority, or  
110 a non-profit consortium established to implement an In-Home Supportive Services Program as  
111 described in Welfare and Institution Code sections 12301.6. et seq.

112 D. This section does not apply to a facility that is licensed and regulated by the State  
113 of California through a process that requires the facility's employees to be the subject of a  
114 background check prior to employment.

115 E. Violation of this ordinance is a misdemeanor or infraction, punishable by a fine,  
116 imprisonment in the county jail up to one year or a combination of both.  
117

#### 118 **5.60.030 Permit -- Application**

119 A. Each application for a permit to act as an elder and/or dependent adult caregiver  
120 shall contain the following information and be submitted to the Caregiver Coordinator:

- 121 1. The full true name and any other names ever used by the applicant;
- 122 2. The current residential address and telephone number of the applicant;
- 123 3. Each residential and business address of the applicant for the five years  
124 immediately preceding the date of the application, and the inclusive dates of each address;
- 125 4. All fictitious business names used by the applicant and the respective addresses of  
126 those businesses;
- 127 5. Written proof that the applicant possesses a valid social security number;
- 128 6. Written proof that the applicant is at least eighteen years of age unless the  
129 particular business has a different age requirement pursuant to state or federal law, in which case  
130 proof of the applicable state or federal law requirement shall be provided;
- 131 7. Applicant's height, weight, color of eyes and hair;

- 132           8.       Submit two passport photographs;  
133           9.       Applicant's business, occupation and employment history for the five years  
134 immediately preceding the date of application, including addresses and dates of employment;  
135           10.      The name and business address of any employing individual elder and/or  
136 dependent adult or elder and/or dependent home service business within the last five years;  
137           11.      Whether the applicant has ever had any license or permit issued by any agency or  
138 board, or any city, county, state or federal agency revoked or suspended, or has had any  
139 professional or vocational license or permit revoked or suspended within five years immediately  
140 preceding the application, and, if so, the reason for the suspension or revocation;  
141           12.      All criminal convictions of the applicant, including those dismissed pursuant to  
142 Penal Code section 1203.4, except traffic, and a statement of the dates and places of such  
143 convictions; and  
144           13.      Such other identification and information as may be required to substantiate the  
145 matters required to be set forth in the application;  
146

147 **5.60.040       Permit – Fees**

- 148           A.       An application fee in the amount adopted by resolution of the Board of  
149 Supervisors shall be paid by each applicant at the time of application and upon annual renewal  
150 thereafter.  
151           B.       A permit fee in the amount adopted by resolution of the Board of Supervisors  
152 shall be paid by each applicant at the time of issuance of the permit and upon annual renewal  
153 thereafter.  
154

155 **5.60.050       Permit Issuance or Denial; Grounds for Denial**

- 156           A.       Upon submittal of a complete application, the Caregiver Coordinator shall  
157 forward the application to the Industry Specialist who shall conduct a background investigation  
158 to determine an applicant's fitness to conduct the occupation of Elder and/or Dependent Adult  
159 Caregiver.  
160           B.       Except as otherwise provided in this Code, upon completion of the investigation  
161 of an applicant, the County shall issue a permit unless:  
162           1.       The applicant has any misdemeanor or felony conviction for violation of the Penal  
163 Code sections included on the list of Disqualifying Crimes;  
164           2.       The applicant has knowingly made a false or misleading statement of a material  
165 fact or omission of a material fact in the application;  
166           3.       The applicant has had a similar type of license, permit, or certificate previously  
167 denied, suspended for a total of six months, or revoked, within five years immediately preceding  
168 the date of the filing of the application, and the applicant can show no material changes in  
169 circumstances since such denial, suspension, or revocation;  
170           4.       The applicant is on informal or formal probation in any jurisdiction;  
171           5.       The applicant has had any felony conviction within ten years immediately  
172 preceding the date of the application; or  
173           6.       After request by the Caregiver Coordinator, the applicant fails to provide proof of  
174 any application requirement set forth in Section 5.60.30;  
175

176 **5.60.060 Permit -- Right to Appeal**

177 Any applicant denied a permit for Elder and/or Dependent Adult Caregiver shall be  
178 afforded an appeal as prescribed by the Industry Specialist.  
179

180 **5.60.070 Permit -- Limited Caregiver Permit**

181 A. A person who would otherwise qualify as an applicant for an elder and/or  
182 dependent adult caregiver permit but cannot do so because of a disqualifying conviction, may  
183 request a limited caregiver permit that will authorize the applicant to perform home services for a  
184 single employing elder or dependent adult. An individual may only possess a single limited  
185 caregiver permit at any time.

186 B. A limited caregiver permit may be issued if the following conditions have been  
187 satisfied:

188 1. Together with the application required for a permit under Section 5.60.30, the  
189 applicant shall submit, a notarized and/or witnessed declaration from the employing elder and/or  
190 dependent adult acknowledging:

191 a. That he or she is aware that the elder and/or caregiver applicant is not eligible for  
192 an elder and/or dependent adult caregiver permit;

193 b. That he or she has been provided, reviewed, and is aware of the criminal  
194 exemptions that prevent an application from passing the background check and he or she  
195 understands the applicant has a disqualifying conviction;

196 c. That he or she desires to employ the applicant as an elder and/or dependent adult  
197 caregiver notwithstanding the applicant's ineligibility to obtain a non-limited permit due to  
198 previous criminal convictions;

199 d. That he or she acknowledges they have knowingly, intelligently, and voluntarily  
200 chosen the applicant to be their elder and/or dependent adult caregiver;

201 e. That he or she understands the possible danger and potential risk involved with  
202 hiring an elder and/or dependent adult caregiver who was unable to pass the background check  
203 and they agree to accept any and all risks associated with their decision to hire the applicant;

204 f. That he or she, to the full extent permitted by law, shall hold harmless, defend at  
205 their own expense, and indemnify the County of Napa and the Caregiver Coordinator and the  
206 officers, agents, employees, and volunteers of the County of Napa and the Caregiver  
207 Coordinator, from any and all liability, claims, losses, damages or expenses, including  
208 reasonable attorney fees, for personal injury (including death) or damage to property, arising  
209 from all acts or omissions of the applicant.

210 C. A limited caregiver permit shall be valid for a period of one year. Thereafter, it  
211 may be renewed for additional one year periods by submittal of an application and current  
212 notarized and/or witnesses declaration. A limited caregiver permit shall not be issued to anyone  
213 that has previously had such a permit suspended or revoked.

214 D. A limited caregiver permit provided under this section shall be subject to any  
215 regulatory and/or criminal action as if it were a permit issued under Chapter 5.60.  
216

217 **5.60.080 Threatening, Coercing, Intimidating, or Using Undue Influence - Prohibited**

218 It is unlawful for any person to threaten, coerce, intimidate, or use undue influence upon  
219 an elder and/or dependent adult to obtain a statement required under Section 5.60.070.  
220

221 **5.60.090 Permit—Update and Renewal**

222 Each permit holder shall apply for renewal of their permit prior to the expiration of said  
223 permit one year after the issuance date. Renewal applications will require the applicant to  
224 provide updates on anything in their original application that has changed.

225  
226 **SECTION 2.** If any section, subsection, sentence, clause, phrase or word of this  
227 ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision  
228 shall not affect the validity of the remaining portions of this ordinance. The Board of  
229 Supervisors of the County of Napa hereby declares it would have passed and adopted this  
230 ordinance and each and all provisions hereof irrespective of the fact that any one or more of said  
231 provisions be declared invalid.

232 **SECTION 3.** This ordinance shall be effective thirty (30) days from and after the  
233 date of its passage.

234 **SECTION 4.** A summary of this ordinance shall be published at least once 5  
235 days before adoption and at least once before the expiration of 15 days after its passage in the  
236 Napa Valley Register, a newspaper of general circulation published in the County of Napa,  
237 together with the names of members voting for and against the same.

238 The foregoing ordinance was introduced and read at a regular meeting of the Board of  
239 Supervisors of the County of Napa, State of California, held on the \_\_\_ day of  
240 \_\_\_\_\_, 2009, and passed at a regular meeting of the Board of Supervisors of the  
241 County of Napa, State of California, held on the \_\_\_ day of \_\_\_\_\_, 2009, by the  
242 following vote:

243 AYES: SUPERVISORS \_\_\_\_\_  
244 \_\_\_\_\_  
245 NOES: SUPERVISORS \_\_\_\_\_  
246 ABSTAIN: SUPERVISORS \_\_\_\_\_  
247 ABSENT: SUPERVISORS \_\_\_\_\_  
248 \_\_\_\_\_  
249 \_\_\_\_\_

250 **MARK LUCE, CHAIR**  
251 Napa County Board of Supervisors

252 ATTEST: GLADYS I. COIL  
253 Clerk of the Board of Supervisors

254 By: \_\_\_\_\_  
255  
256  
257

<b>APPROVED AS TO FORM</b> <b>Office of County Counsel</b>	<b>Approved by the Napa County</b> <b>Board of Supervisors</b>
By: _____ (by e-signature) Deputy County Counsel	Date: _____
Date: _____	Processed by: _____ Deputy Clerk of the Board

258  
259  
260



261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272

I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON \_\_\_\_\_.

\_\_\_\_\_, DEPUTY

GLADYS I. COIL, CLERK OF THE BOARD