

ORDINANCE O2020-__

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NAPA, STATE OF CALIFORNIA, REPEALING NAPA
MUNICIPAL CODE CHAPTER 5.22 (ELDER CAREGIVER
PERMITS) AND REPLACING IT WITH A NEW CHAPTER
5.22 (ELDER AND DEPENDENT ADULT PROTECTION)

WHEREAS, in February 2011, the City Council adopted O2011 5, adding a new Chapter 5.22, "Elder Caregiver Permits," to the Napa Municipal Code ("the Elder Care Ordinance") and establishing application and permit requirements for caregivers providing personal and domestic services to elders and dependent adults; and

WHEREAS, the Elder Care Ordinance was modeled on Napa County Code, Title Five, commencing with Chapter 5.60 ("the County Ordinance") and was amended in 2013; and

WHEREAS, pursuant to Agreement No. 7596 ("the MOU") with Napa County and the Area Agency on Aging, prior to July 1, 2018 the Area Agency on Aging was the city-designated organization managing the caregiver permitting program; and

WHEREAS, on July 1, 2018 the Napa County Health and Human Services, Comprehensive Services for Older Adults (CSOA) division took over management of the program continuing to serve the City of Napa under the MOU; and

WHEREAS, after assuming program management CSOA convened a working group consisting of representatives from CSOA, the Napa County District Attorney's Office, the Napa County Assessor/Recorder's and members of the Commission on Aging to update the County Ordinance and incorporate the use of California Department of Social Service's Home Care Aide Registry; and

WHEREAS, the updated County Ordinance incorporating the recommendations of the working group became effective March 11, 2020; and

WHEREAS, pursuant to the MOU, the City is required to make changes to Napa Municipal Code Chapter 5.22 to be "substantially the same" as the County Code Chapter 5.60 no later than ninety days after notice of a change by the County; and

WHEREAS, the City Council wishes to adopt parallel amendments to the Elder Care Ordinance to comply with the requirements of the MOU; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

ATTACHMENT 1

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as follows:

SECTION 1: Amendment. Napa Municipal Code Chapter 5.22 (Elder Caregiver Permits) is hereby repealed in its entirety and replaced with a new Chapter 5.22 (Elder and Dependent Adult Protection), which is hereby adopted to read as set forth on “Exhibit A” attached hereto and incorporated herein by reference.

SECTION 2: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3: Effective Date. This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: _____

ATTEST: _____
CITY CLERK OF THE CITY OF NAPA

ATTACHMENT 1

STATE OF CALIFORNIA }
COUNTY OF NAPA } SS:
CITY OF NAPA }

I, Tiffany Carranza, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the public meeting of the City Council on the 7th day of April, 2020, and had its second reading and was adopted and passed during the public meeting of the City Council on the ____ day of ____, 20__, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Tiffany Carranza
City Clerk

Approved as to Form:

Michael W. Barrett
City Attorney

EXHIBIT A

CHAPTER 5.22 ELDER AND DEPENDENT ADULT PROTECTION

5.22.010 - Definitions.

The following words and phrases, when used in this title, shall be construed as follows:

“Advertise” includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or by airwave or any electronic transmission, or in any directory under a listing as a caregiver providing in home services or a caregiver referral agency covered by this chapter.

“Affiliated home care aide” means an individual, 18 years of age or older, who is employed by a home care organization to provide home care services or in-home services to a client.

“Caregiver” and “home care aide” means any person that provides personal and/or home care services and/or in-home services for profit, compensation or any form of consideration for an elder and/or dependent adult.

“Caregiver coordinator” means the person(s) designated by resolution of the City Council to be responsible for verifying home care aide registration and overseeing the limited permit program on behalf of the City.

“Caregiver referral agency” means an individual, eighteen years or older, partnership, corporation, limited liability company, joint venture, association or other entity that offers and/or arranges caregivers for referral into the unlicensed homes of elders and/or dependent adults for the purpose of providing personal and/or domestic service and/or in-home services to the elder and/or dependent adult for compensation or any form of consideration.

“Client” means an individual who receives home care services or in-home services from a registered home care aide or a limited caregiver permit holder.

“County” shall mean the County of Napa, California.

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

ATTACHMENT 1

“Elder” has the same meaning as used in Penal Code Section 368 (any person who is 65 years of age or older).

“For profit” means any type of compensation or consideration, whether in the form of current or future benefit, provided by the elder or dependent adult to the caregiver for the caregiver's services.

“Home care services or in-home services” means nonmedical services and assistance provided by a home care aide to a client who, because of advanced age or physical or mental disability, cannot perform these services. These services enable the client to remain in their residence and include, but are not limited to, assistance with the following: bathing, dressing, feeding, exercising, personal hygiene and grooming, transferring, ambulating, positioning, toileting and incontinence care, assisting with medication that the client self-administers, housekeeping, meal planning and preparation, laundry, transportation, correspondence, making telephone calls, shopping for personal care items or groceries, and companionship.

“Independent home care aide” means an individual, 18 years of age or older, who is not employed by a home care organization (as defined in Home Care Services Consumer Protection Act), but who is listed on the home care aide registry and is providing home care services or in-home services through a direct agreement with a client.

“Home Care Aide Registry” means the California Department of Social Services Home Care Aide Registry.

“Home care organization” means an individual, 18 years of age or older, firm, partnership, corporation, limited liability company, joint venture, association, or other entity that arranges for home care services or in-home services by an association, or other entity that arranges for home care services or in-home services by an affiliated home care aide to a client and is licensed pursuant to the Health and Safety Code.

“Limited caregiver permit” means a permit to work for profit as a caregiver for a single elder and/or dependent adult only (rather than for multiple clients) when a care provider has been found ineligible for the Home Care Registry Aide.

“Personal and/or domestic services” includes the following services for elders and/or dependent adults: domestic services performed on a regular basis more than one day a week such as housework, meal preparation, meal clean-up, laundry, grocery and other essential shopping, other errands, heavy house or yard cleaning; and/or personal services performed on a regular basis such as bathing, oral hygiene, grooming, dressing, feeding, assistance with ambulation and/or transfers, care and assistance with medical apparatus, taking an elder and/or dependent adult to and from medical appointments, or any other similar acts.

“Registered” means a caregiver or home care aide whose registration status on the

Home Care Aide Registry search page is “registered” pursuant to the Home Care Services Consumer Protection Act, Article III, Section 90-071(a)(2).

“Undue influence” consists of any one or more of the following: (1) the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over that other, of such confidence or authority, for the purpose of obtaining an unfair advantage over the other; or, (2) taking an unfair advantage of another's weakness of mind; or, (3) taking a grossly oppressive or unfair advantage of another's necessities or distress. Whether from weakness on one side, or strength on the other, or a combination of the two, undue influence occurs whenever there results that kind of supremacy of one mind over another by which that other is prevented from acting according to their own wish or judgment, and whereby the will of the other is overborne and he/she is induced to do an act that, if left to act freely, he/she would not do.

5.22.020 – Home Care Aide Registry—Required.

A. It is unlawful for any person, including individuals who are not employed by a home care organization but who provide home care services or in-home services to a client, unless expressly exempted by Home Care Services Consumer Protection Act and Health and Safety Code Section 1796.14(c), to act as a caregiver and/or home care aide for profit or compensation unless such individual is listed on the home care aide registry pursuant to the Home Care Services Consumer Protection Act.

B. It is unlawful for a caregiver referral agency to arrange, promote, advertise, and/or include on a list, a caregiver for the purpose of providing personal and/or domestic services to an elder and/or dependent adult without providing a “home care aide personnel ID number”.

C. Violation of this chapter is a misdemeanor, punishable by a fine, imprisonment in the county jail up to one year, or a combination of both.

5.22.030 - Registration—Application.

Each applicant, including individuals who are not employed by a home care organization but who provide home care services or in-home services to a client in Napa, California, unless expressly exempted by Home Care Services Consumer Protection Act, Article 2, Section 1796.14 (c) shall comply with the conditions and requirements of Home Care Services Consumer Protection Act, Health and Safety Code Sections 1796.19, 1796.21, 1796.22, 1796.23 and 1796.24. Individuals who are not employed by a home care organization but who provide home care services or in-home services to a client, unless expressly exempted by Home Care Services Consumer Protection Act, Health and Safety Code Section 1796.14(c), shall provide the caregiver coordinator proof that they have tested negative for Tuberculosis.

5.22.040 – Registration – Publication

The first and last name, birth day and birth month (but not year) and home care aide personnel ID number or limited permit holder designation, for every registered caregiver and limited caregiver permit holder, will be posted on the county website.

5.22.050 - Registration—Denial and revocation.

An application for registration may be denied, and registration may be revoked pursuant to Home Care Services Consumer Protection Act, Health and Safety Code Sections 1796.25 and 1796.26.

5.22.060 - Registration —Update and renewal.

To remain on the home care aide registry, each registered home care aide, including individuals who are not employed by a home care organization but who provide home care services or in-home services to a client, unless expressly exempted by Home Care Services Consumer Protection Act, Health and Safety Code Section 1796.14 (c), shall renew their registration every two years, pursuant to Home Care Services Consumer Protection Act Health and Safety Code Section 1796.31. To renew their registration, individuals who are not employed by a home care organization but who provide home care services or in-home services to a client, unless expressly exempted by Home Care Services Consumer Protection Act, Health and Safety Code Section 1796.14 (c), shall provide the caregiver coordinator proof that they have tested negative for Tuberculosis.

5.22.070 - Permit—Limited caregiver permit.

A. A person who has applied for the Home Care Aide Registry but was denied for any of the reasons set forth in the Health and Safety Code Section 1796.25 may request a limited caregiver permit from the caregiver coordinator. The limited permit will authorize the applicant to perform home care services or in-home services for a single employing elder or dependent adult. An individual may possess only a single limited caregiver permit at any one time and a limited permit must be renewed annually from the date it was first issued.

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

1. There is no ongoing law enforcement investigation or APS report for elder abuse.

2. Together with the application and payment of fees required to the Napa County Clerk-Recorder for a permit, the applicant shall submit a notarized and/or witnessed declaration from the employing elder and/or dependent adult acknowledging the following:

a. That they are aware that the applicant is not eligible for the Home Care Aide Registry.

b. That they have been provided, reviewed, and are aware of the criminal convictions that prevented the applicant from being qualified for the Home Care Aide Registry and they understand that the applicant has a disqualifying conviction;

c. That they desire to employ the applicant as an elder and/or dependent adult caregiver notwithstanding the applicant's ineligibility to be registered on the Home Care Aide Registry due to previous criminal convictions;

d. That they have knowingly, intelligently, and voluntarily chosen the applicant to be their caregiver;

e. That they understand the possible danger and potential risk involved with hiring a caregiver who was unable to be registered and agree to accept any and all risks associated with the decision to hire the applicant, and

f. That they, to the full extent permitted by law, shall hold harmless, defend at their own expense, and indemnify the county, city and their respective elected and appointed officials, officers, agents, employees, including the caregiver coordinator, and volunteers, from any and all liability, claims, losses, damages or expenses, including reasonable attorney fees, for personal injury (including death) or damage to property, arising from all acts or omissions of the applicant.

g. All individuals with limited caregiver permits must show proof of permit while providing home care services or in-home services.

C. A limited caregiver permit provided under this section shall be subject to any regulatory and/or criminal action. Failure to provide proof of permit is a violation of this chapter).

5.22.075 - Threatening, coercing, intimidating, or using undue influence—Prohibited.

It is unlawful for any person to threaten, coerce, intimidate, or use undue influence upon an elder and/or dependent adult in order to obtain a statement required under Section 5.22.070. Any person found to have threatened, coerced, intimidated, or unduly influenced an elder and/or dependent adult may be the subject of criminal prosecution.

5.22.080 - Registry—Advertising.

A. It is unlawful for any person to advertise as a caregiver covered by this chapter unless that person is registered on the Home Care Aide Registry under this chapter.

B. It is unlawful for any referral agency to advertise for a caregiver covered by this chapter unless that caregiver is registered on the Home Care Aide Registry under this chapter.

C. Any person or caregiver referral agency who advertises or puts out any sign or card or other device that would indicate to the public that they are a caregiver, or who causes their name or business name to be included in a classified advertisement to a directory under a classification for caregivers covered by this chapter, is required to include the home care aide's personnel identification number in the advertisement.