

FILE NO. 130400

ORDINANCE NO.

[Health Code - Massage Practitioners]

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Ordinance amending the Health Code, to exempt massage practitioners who are certified by the State of California and massage establishments that employ only state-certified massage practitioners from requirements for obtaining a permit from the San Francisco Health Department; and making environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. ____ and is incorporated herein by reference.

Section 2. The Health Code is hereby amended by amending Article 29, to read as follows:

ARTICLE 29

LICENSING AND REGULATION OF MASSAGE PRACTITIONERS

- Sec. ~~1900~~29.1. Definitions.
- Sec. ~~1901~~29.2. Permit Required for Massage Practitioner; Exemption.
- Sec. ~~1902~~29.3. Application for Massage Practitioner Permit; General and Advanced Practitioners, *for Practitioners Not Certified by the State*.
- Sec. ~~1903~~29.4. Issuance of Massage Practitioner Permit, *for Practitioners Not Certified by the State*.
- Sec. ~~1904~~29.5. Temporary Massage Practitioner Permit; Trainee Permit, *for Practitioners Not Certified by the State*.

- 1 Sec. ~~1905~~29.6. Identification Card, *for Practitioners Not Certified by the State.*
- 2 Sec. ~~1906~~29.7. Massage Practitioner License Fee.
- 3 Sec. ~~1907~~29.8. Revocation of Massage Practitioner Permit, *for Practitioners Not Certified by the*
4 *State.*
- 5 Sec. 29.9 *Registration Of Massage Establishments That Employ Only State Certified*
6 *Practitioners.*
- 7 Sec. Permit Required for a Massage Establishment, Solo Practitioner Massage
8 ~~1908~~29.10. Establishment, or Outcall Massage Service, Exemptions *for Practitioners Not*
9 *Certified by the State.*
- 10 Sec. Application for Massage Establishment, Solo Practitioner Massage
11 ~~1909~~29.11. Establishment, or Outcall Massage Service Permit *for Practitioners Not*
12 *Certified by the State..*
- 13 Sec. *Operating Requirements Facilities Necessary for All Massage Establishments.*
14 ~~1910~~29.12.
- 15 Sec. ~~1911.~~ *Facilities Necessary for Solo Practitioner Massage Establishment*
- 16 Sec. Referral of Permit Application to Other Departments, *for Practitioners Not*
17 ~~1912~~29.13. *Certified by the State.*
- 18 Sec. Issuance of Massage Establishment, Solo Practitioner Massage
19 ~~1913~~29.14. Establishment, or Outcall Massage Service Permit, *for Practitioners Not*
20 *Certified by the State..*
- 21 Sec. ~~1914.~~ *Operating Requirements for Massage Establishment.*
- 22 Sec. Employment of Massage Practitioners.
23 ~~1915~~29.15.
- 24 Sec. Register of Employees.
25 ~~1916~~29.16.
- 26 Sec. Employment of Persons Under the Age of 18 Prohibited.
27 ~~1917~~29.17.
- 28 Sec. Display of Permit; Hours of Operation.
29 ~~1918~~29.18.
- 30 Sec. Inspection.
31 ~~1919~~29.19.
- 32 Sec. Massage Establishment, Solo Practitioner Massage Establishment, or Outcall
33 ~~1920~~29.20. Massage Service License Fee.
- 34 Sec. Revocation of Massage Establishment, Solo Practitioner Massage
35 ~~1921~~29.21. Establishment, or Outcall Massage Service Permit, *for Practitioners not*

Certified by the State.

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3 Sec. Hearings.
~~1922~~29.22.

4 Sec. Transfer of Permit.
~~1923~~29.23.

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6 ~~Sec. 1924.~~ Existing Permits.

7 Sec. Business Tax and Zoning Information, Resources for Massage Practitioners.
~~1925~~29.24.

8 Sec. Rules and Regulations; Complaint Line.
~~1926~~29.25.

9 Sec. Fees.
~~1927~~29.26.

10 Sec. Violations and Administrative Penalties.
~~1928~~29.27.

11 Sec. Cost Recovery.
~~1928.~~~~1~~29.28.

12 Sec. Violations and Criminal Penalties.
~~1928.~~~~2~~29.29.

13 Sec. Cooperative Efforts with Law Enforcement.
~~1929~~29.30.

14 Sec. Disclaimer.
~~1930~~29.31.

15 Sec. Severability.
~~1931~~29.32.

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19 **SEC. ~~1900~~29.1. DEFINITIONS.**

20 For the purposes of this Article:

21 (a) "City" means the City and County of San Francisco.

22 (b) "Convicted" means having pled guilty or having received a verdict of guilty,
23 including a verdict following a plea of nolo contendere, to a crime.

24 (c) "Director" means the Director of Public Health or any individual designated by
25 the Director to act on his or her behalf.

1 ~~(d)~~ "Massage" means any method of pressure on or friction against, or stroking,
2 kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft pads of the
3 body with the hands or with the aid of any mechanical electrical apparatus or appliances, with
4 or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder,
5 lotions, ointments, or other similar preparations.

6 ~~(e)~~ "Massage establishment" means a fixed place of business where more than
7 one person engages in or carries on, or permits to be engaged in or carried on, the practice of
8 massage.

9 ~~(f)~~ "Massage practitioner" means any individual who, for any monetary
10 consideration whatsoever, engages in the practice of massage. "Massage practitioner" shall
11 include both general massage practitioners and advanced massage practitioners, as provided
12 in Section 1901.

13 ~~(g)~~ "Non-profit organization" means any fraternal, charitable, religious,
14 benevolent, or any other nonprofit organization having a regular membership association
15 primarily for mutual social, mental, political, and civic welfare, to which admission is limited to
16 the members and guests and revenue accruing therefrom to be used exclusively for the
17 benevolent purposes of said organization and which organization or agency is exempt from
18 taxation, under the Internal Revenue Laws of the United States as a bona fide fraternal,
19 charitable, religious, benevolent, or non-profit organization.

20 ~~(h)~~ "Outcall massage service" means any business, not permitted as a massage
21 establishment or solo practitioner massage establishment under the provisions of this Article,
22 wherein the primary function of such business is to engage in or carry on massage not at a
23 fixed location but at a location designated by the client or customer.

24 ~~(i)~~ "Permittee" means the owner, proprietor, manager, or operator of a massage
25 establishment, outcall massage service, or solo practitioner massage establishment.

1 (†) "Person" means any individual, partnership, firm, association, joint stock
2 company, corporation, or combination of individuals of whatever form or character.

3 (†) "Recognized school for massage" means any school or institution of learning
4 which teaches the theory, ethics, practice, profession, and work of massage, which requires a
5 resident course of study of not less than 100 hours to be completed before the student shall
6 be furnished with a diploma or certificate of graduation, and which has been approved
7 pursuant to California Education Code Sections 94301 et seq., or, if said school or institution
8 is not located in California, has complied with standards commensurate with those required in
9 said Sections 94301 et seq. and has obtained certification under any similar state approval
10 program, if such exists.

11 (†) "Solo practitioner massage establishment" means a fixed place of business
12 where a person holding an advanced massage practitioner permit engages in or carries on, or
13 permits to be engaged in or carried on, the practice of massage. Said fixed place of business
14 may be shared by two to four advanced massage practitioners, or two to four advanced
15 massage practitioners and one or more health or healing arts practitioners, except as
16 otherwise provided pursuant to Section ~~191329.14~~(e).

17 **SEC. ~~190129.2~~. PERMIT REQUIRED FOR MASSAGE PRACTITIONER;**
18 **EXEMPTIONS.**

19 (a) It shall be unlawful for any individual who is not certified as a massage practitioner
20 or therapist by the State of California pursuant to the California Business and Professions Code to
21 engage in the practice of massage without first obtaining a permit from the Director.

22 (b) An individual may receive a permit as either a general massage practitioner or
23 an advanced massage practitioner, as provided in Section ~~190229.3~~. As used in this Article,
24 the term "massage practitioner" shall refer to both general massage practitioners and
25 advanced massage practitioners, unless otherwise specifically provided in this Article.

1 (c) A permit is not required where the individual is a licensed or certificated health
2 care practitioner practicing massage as part of his or her health care practice. For purposes of
3 this Section, "health care practitioner" shall mean any person whose activities are licensed or
4 regulated under Division 2 of the California Business and Professions Code or any initiative
5 act referred to in that division.

6 (d) A permit is not required where the individual is a barber, cosmetologist,
7 esthetician, or manicurist licensed or certificated pursuant to Division 3, Chapter 10, of the
8 California Business and Professions Code, practicing massage as part of his or her work as a
9 barber, cosmetologist, esthetician, or manicurist and within the scope of any relevant state
10 restrictions on the practice of massage by members of those professions.

11 (e) An individual practicing massage under the direction of a non-profit
12 organization, and the organization itself are exempt from permit and license fees under this
13 Article, but the individual and the organization must obtain the necessary permits and licenses
14 and otherwise comply with all relevant requirements.

15 **SEC. ~~190229.3.~~ APPLICATION FOR MASSAGE PRACTITIONER PERMIT;**
16 **GENERAL AND ADVANCED PRACTITIONERS NOT CERTIFIED BY THE STATE.**

17 (a) Unless certified as a massage practitioner or therapist by the State of California
18 pursuant to the California Business and Professions Code, ~~E~~every applicant for a massage
19 practitioner permit shall file an application with the Director upon a form provided by the
20 Director and pay a non-refundable application fee, as set forth in Section ~~192729.26.~~

21 (b) The application for a massage practitioner permit shall set forth, under penalty
22 of perjury, the following:

- 23 (1) Name and residence address of the applicant;

1 (2) A unique identifying number from at least one government-issued form of
2 identification, such as a social security card, a state driver's license or identification card, or a
3 passport;

4 (3) Written evidence that the applicant is at least 18 years of age;

5 (4) Applicant's height, weight, and color of hair and eyes;

6 (5) Business, occupation, or employment of the applicant for the five years
7 immediately prior to the date of application; this information shall include, but not be limited to,
8 a statement as to whether or not the applicant, in working as a massage practitioner or
9 bodywork technician or similar occupation under a permit or license, has had such permit or
10 license revoked or suspended, and the reasons therefor; and

11 (6) All felony or misdemeanor convictions.

12 (c) An applicant for a general massage practitioner permit shall provide, as part of
13 the application, the name and address of the recognized school for massage attended, the
14 dates attended, and the original of the diploma or certificate of completion awarded the
15 applicant showing that the applicant has completed not less than 100 hours of instruction. An
16 applicant for an advanced massage practitioner permit shall provide, as part of the
17 application, the name and address of the recognized school or schools for massage attended,
18 the dates attended, and the original of the diploma(s) or certificate(s) of completion awarded
19 the applicant showing that the applicant has completed not less than 200 hours of instruction.
20 The additional 100 hours of instruction required for the advanced massage practitioner permit
21 may be completed at one or more schools. If the applicant already holds a current general
22 massage practitioner permit, he or she need only submit documentation for the additional 100
23 hours of instruction necessary for the advanced massage practitioner permit.

24 (d) The Director shall administer a culturally-sensitive test to all applicants, in the
25 applicant's own language, to confirm basic proficiency in massage before issuing a permit.

1 (e) The Director is hereby authorized to require in the application any other
2 information including, but not limited to, any information necessary to discover the truth of the
3 matters set forth in the application.

4 **SEC. ~~190329.4~~. ISSUANCE OF MASSAGE PRACTITIONER PERMIT FOR**
5 ***PRACTITIONERS NOT CERTIFIED BY THE STATE.***

6 (a) Within 14 days following a hearing, or, if no hearing is held, within 60 business
7 days following receipt of a completed application for a massage practitioner permit, *for a*
8 *practitioner who is not certified as a massage practitioner or therapist by the State of California*
9 *pursuant to the California Business and Professions Code* the Director shall either issue the permit
10 or mail a written statement of his or her reasons for denial thereof to the applicant. If the
11 Director takes neither action, the permit shall *be* deemed issued.

12 (b) No massage practitioner permit shall be issued if the Director finds:

- 13 (1) The applicant has provided materially false documents or testimony; or
14 (2) The applicant has not complied fully with the provisions of this Article; or
15 (3) Within five years immediately prior to the date of application, the applicant
16 has had any license or permit related to the practice of massage revoked; or
17 (4) The applicant has been convicted of any of the following offenses or

18 convicted of an offense outside the State of California that would have constituted any of the
19 following offenses if committed within the State of California:

20 (A) Any felony involving the use of coercion or force and violence upon
21 another person; or

22 (B) Any misdemeanor sexual battery; or

23 (C) Any offense involving sexual misconduct with children; or

24 (D) Any offense requiring registration pursuant to Section 290 of the
25 California Penal Code.

1 (c) The Director may issue a massage practitioner permit to any individual
2 convicted of one of the offenses listed in Subsection (b)(4) of this Section if the Director finds
3 that the offense was not violent, the conviction occurred at least five years prior to the date of
4 application, and the applicant has not been convicted subsequently of one of those offenses.

5 (d) If an application for a massage practitioner permit is denied, within 30 days of
6 the date of receipt of the notice of denial, the applicant may appeal the decision by notifying
7 the Director in writing. The notice shall set forth in detail the ground or grounds for the appeal.
8 Within 30 days of receipt of the notice of appeal, the Director shall conduct a hearing to
9 consider the appeal. At least 10 days prior to the hearing, the Director shall notify the
10 applicant of the time and place of the hearing. The Director shall oversee the hearing, provide
11 the applicant an opportunity to speak at the hearing, and issue a ruling within 30 days of its
12 conclusion. The Director's ruling shall be final.

13 **SEC. ~~190429.5~~. TEMPORARY MASSAGE PRACTITIONER PERMIT; TRAINEE**
14 **PERMIT FOR PRACTITIONERS NOT CERTIFIED BY THE STATE.**

15 (a) Upon completion and submission of an application for a massage practitioner
16 permit *for a practitioner who is not certified as a massage practitioner or therapist by the State of*
17 *California pursuant to the California Business and Professions Code,* as required in Section
18 ~~190229.3~~ of this Article, and upon payment of all fees for the permit, an applicant may request
19 a temporary massage practitioner permit. If requested, the Director shall issue the temporary
20 massage practitioner permit which is valid for the period during which the application is under
21 review, but in no event for more than 60 days. The Director may revoke the permit at any time
22 if he or she finds that the applicant has failed to meet any of the requirements of Section 1903
23 of this Article.

24 (b) The Director may adopt rules and procedures for issuing trainee permits, not
25 to exceed three months in duration, to persons who have otherwise completed an application

1 for a massage practitioner permit and who are currently registered in a recognized school of
2 massage to fulfill the training requirement.

3 **SEC. ~~190529.6~~. IDENTIFICATION CARD FOR PRACTITIONERS NOT CERTIFIED BY**
4 **THE STATE.**

5 The Director shall provide all massage practitioners, *who are not certified as a massage*
6 *practitioner or therapist by the State of California pursuant to the California Business and Professions*
7 *Code*, granted a permit with an identification card. The identification card must *be* presented to
8 any City health inspector upon request at all times during the regular business hours of any
9 massage establishment or solo practitioner massage establishment.

10 **SEC. ~~190629.7~~. MESSAGE PRACTITIONER LICENSE FEE.**

11 Every massage practitioner shall pay to the Tax Collector an annual license fee, as
12 set forth in Section ~~192729.26~~.

13 **SEC. ~~190729.8~~. REVOCATION OF MESSAGE PRACTITIONER PERMIT, FOR**
14 **PRACTITIONERS NOT CERTIFIED BY THE STATE.**

15 (a) The Director may revoke or suspend any massage practitioner permit *for a*
16 *practitioner who is not certified as a massage practitioner or therapist by the State of California*
17 *pursuant to the California Business and Professions Code*, after a public hearing, if the Director
18 finds:

19 (1) The massage practitioner willfully violated any of the provisions of this
20 Article; or

21 (2) The massage practitioner has provided materially false documents or
22 testimony; or

23 (3) Within five years immediately prior to the date of application, the massage
24 practitioner has had any license or permit related to the practice of massage revoked; or
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1 (4) The massage practitioner has violated a rule or regulation adopted by the
2 Director pursuant to Section ~~1926~~29.25.

3 (b) Before any hearing is conducted under this Section, the Director shall provide
4 the massage practitioner at least 20 days written notice. The notice shall include the time,
5 place, and grounds for the hearing. If requested by the massage practitioner, the Director
6 shall make available all documentary evidence against him or her no later than 15 days prior
7 to the hearing. At the hearing, the massage practitioner shall be provided an opportunity to
8 refute all evidence against him or her. The Director shall oversee the hearing and issue a
9 ruling within 20 days of its conclusion. The Director's ruling shall be final.

10 (c) The Director may suspend summarily any massage practitioner permit issued
11 under this Article pending a noticed hearing on revocation or suspension when in the opinion
12 of the Director the public health or safety requires such summary suspension. Any affected
13 permittee shall be given notice of such summary suspension in writing delivered to said
14 permittee in person or by registered letter.

15 **SEC. 29.9. REGISTRATION OF MASSAGE ESTABLISHMENTS THAT EMPLOY ONLY**
16 **STATE CERTIFIED PRACTITIONERS.**

17 *(a) All massage establishments that employ only massage practitioners who are certified by the*
18 *State of California pursuant to the California Business and Professions Code, must provide copies of*
19 *those certificates to the San Francisco Department of Public Health for all massage practitioners*
20 *employed by the establishment. The massage establishment must update this information annually.*

21 *(b) All massage establishments that employ only massage practitioners who are certified by the*
22 *state must notify the Department if any state certified massage practitioner loses their state*
23 *certification.*

1 (c) Any massage establishment that employs any massage practitioner who is not certified by
2 the state must obtain a permit to operate a massage establishment from the San Francisco Department
3 of Public Health in accordance with this Article 29.

4 (d) Upon notice from California Massage Therapy Council, or any successor agency authorized
5 under the California Business and Professions Code to certify massage practitioners , that the state
6 certification of a massage practitioner has been suspended or revoked, the Department shall send
7 written notice to the massage establishment that it must obtain a permit from the San Francisco
8 Department of Public in order to continue to operate, and that it must apply for the permit within thirty
9 (30) days of the notice. Failure to either apply for a San Francisco permit or to regain exempt status
10 by employing only state-certified massage practitioners within thirty (30) days, may result in
11 administrative penalties as set forth in this Article 29, Section 29.27.

12 **SEC. ~~1908~~29.10. PERMIT REQUIRED FOR A MESSAGE ESTABLISHMENT, SOLO**
13 **PRACTITIONER MESSAGE ESTABLISHMENT, OR OUTCALL MESSAGE SERVICE,**
14 **EXEMPTIONS FOR PRACTITIONERS NOT CERTIFIED BY THE STATE.**

15 (a) It shall be unlawful for any person to engage in, conduct, or carry on, or to
16 permit to be engaged in, conducted, or carried on, in or upon any premises in the City the
17 operation of a massage establishment, solo practitioner massage establishment, or outcall
18 massage service without first obtaining a permit from the Director, unless all persons employed
19 by that establishment or service are certified as massage practitioner(s) or therapist(s) by the State of
20 California pursuant to the California Business and Professions Code.

21 (b) Hospitals, nursing homes, and other State-licensed health care facilities
22 providing massage services to their patients shall not be required to obtain a permit under this
23 Section, where the services are provided by a licensed or certificated health care practitioner
24 or an individual practicing massage under the direction of a health care practitioner. For
25 purposes of this Section, "health care practitioner" shall mean any person whose activities are

1 licensed or regulated under Division 2 of the California Business and Professions Code or any
2 initiative act referred to in that division.

3 (c) A permit shall not be required under this Section where the services are
4 provided on the premises (1) by a licensed or certificated health care practitioner or (2) by a
5 barber, cosmetologist, esthetician, or manicurist, licensed or certificated pursuant to Division
6 3, Chapter 10, of the California Business and Professions Code, practicing massage as part
7 of his or her work as a barber, cosmetologist, esthetician, or manicurist, and within the scope
8 of any relevant state restrictions on the practice of massage by members of those
9 professions. A non-profit organization providing massage services on its premises, and the
10 individuals providing the massage services, are exempt from permit and license fees under
11 this Article, but the organization and the individuals must obtain the necessary permits and
12 licenses and otherwise comply with all relevant requirements.

13 **SEC. ~~190929.11~~. APPLICATION FOR MESSAGE ESTABLISHMENT, SOLO**
14 **PRACTITIONER MESSAGE ESTABLISHMENT, OR OUTCALL MESSAGE SERVICE**
15 **PERMIT FOR PRACTITIONERS NOT CERTIFIED BY THE STATE.**

16 (a) Unless certified as a massage practitioner or therapist by the State of California
17 pursuant to the California Business and Professions Code, ~~E~~every applicant for a massage
18 establishment, solo practitioner massage establishment, or outcall massage service permit
19 shall file an application with the Director upon a form provided by the Director and pay a non-
20 refundable application fee, as set forth in Section ~~192729.26~~.

- 21 (b) The application shall set forth, under penalty of perjury, the following:
- 22 (1) The exact nature of the services to be rendered;
 - 23 (2) The address of the proposed place of business and facilities thereof
- 24
25

1 (3) The number of individuals to be employed by the business, and, in the
2 case of a solo massage practitioner establishment, the names of any massage practitioners
3 who shall operate under that permit;

4 (4) The name, residence address, and date of birth of each applicant;

5 (5) Any history of previous massage permits or licenses in San Francisco or
6 elsewhere, including whether any such permit or license has been revoked and the reasons
7 therefor, for each applicant; and

8 (6) All felony or misdemeanor convictions for the applicant.

9 (c) The Director is hereby authorized to require in the application any other
10 information including, but not limited to, information related to the health, hygiene, and
11 sanitation of the premises and any information necessary to confirm the accuracy of the
12 matters set forth in the application.

13 (d) If an applicant for a massage establishment or outcall massage service permit
14 is a corporation, the name of the corporation shall be set forth exactly as shown in its articles
15 of incorporation together with the names and residence addresses of each of the officers,
16 directors, and each stockholder holding more than 10 percent of the stock of the corporation.
17 If the application is a partnership, the application shall set forth the name and the residence
18 address of each of the partners, including limited partners. If one or more of the partners is a
19 corporation, the provisions of this Section pertaining to corporate applicants applies. The
20 same permit and criminal history information required of individual applicants shall be
21 provided for each officer, director, and stockholder holding more than 10 percent of the stock
22 of the corporation, or for each partner, including limited partners.

23 (e) In addition to the information required under subsections (b) and (c), an
24 applicant for a solo practitioner massage establishment permit shall provide proof that he or
25

1 she holds a current, valid advanced massage practitioner permit issued by the Director under
2 Section 1901.

3 (f) Applicants shall also submit proof of compliance with any applicable Planning
4 Code requirements regarding notice and posting of the proposed establishment.

5 (g) An advanced massage practitioner holding a solo practitioner massage
6 establishment permit shall not be required to pay any additional permit fee for an outcall
7 massage service permit.

8 **SEC. ~~191029.12.~~ OPERATING REQUIREMENTS FOR ALL MASSAGE**
9 **ESTABLISHMENTS.**

10 *No permit to conduct a massage establishment shall be issued unless an inspection by the*
11 *Director reveals that the All massage establishments must comply with ~~each of~~ the following*
12 *reasonable health and safety requirements:*

13 (a) *Toilet facilities shall be provided for patrons in convenient locations.*

14 (1) Construction of rooms used for toilets, tubs, steam baths, and showers shall
15 be made waterproof with hard nonabsorbent materials which are easily cleaned and shall be
16 installed in accordance with the San Francisco Building Code.

17 (2) Plumbing fixtures shall be installed in accordance with the San Francisco
18 Plumbing Code.

19 (1) ~~*For toilet rooms, toilet room vestibules, and rooms containing bathtubs, there shall*~~
20 ~~*be a waterproof floor covering, which will be carried up all walls to a height of at least five inches.*~~
21 ~~*Floors shall be coved at the juncture of the floor and wall with a inch minimum radius coving.*~~

22 (2) ~~*Steam rooms and shower compartments shall have waterproof floors, walls, and*~~
23 ~~*ceilings approved by the Director.*~~

1 (3) ~~Floors of wet and dry heat rooms shall be adequately pitched to one or more floor~~
2 ~~drains properly connected to the sewer. Dry heat rooms with wooden floors need not be provided with~~
3 ~~pitched floors and floor drains.~~

4 (4) ~~A source of hot water must be available within the vicinity of dry and wet heat~~
5 ~~rooms to facilitate cleaning.~~

6 ~~(b) Toilet facilities shall be provided in convenient locations. When five or more~~
7 ~~employees or patrons of different genders are on the premises at the same time, separate toilet facilities~~
8 ~~shall be provided. A single toilet shall be provided for each 1.5 or more persons of the same gender on~~
9 ~~the premises at any one time. (3) Urinals may be substituted for toilets after one toilet has been~~
10 provided.

11 (4) Doors to toilet rooms shall open inward and be self-closing.

12 (5) Toilet rooms shall be designated as to the gender accommodated therein.

13 (b) Handwashing facilities shall be provided within, or adjacent to the toilet rooms and
14 shall be equipped with an adequate supply of hot and cold running water under pressure.

15 (1) ~~Lavatories or wash basins with both hot and cold running water shall be installed in~~
16 ~~either the toilet room or the vestibule.~~ Lavatories or wash basins must have soap in a dispenser
17 and sanitary towels.

18 (2) handwashing facilities shall be readily accessible to the massage practitioner.

19 (d~~c~~) All portions of the massage establishment shall be provided with adequate
20 light and ventilation by means of windows or skylights with an area of not less than of the total
21 floor area, or shall be provided with an approved artificial light and a mechanical operating
22 ventilating system. ~~When windows or skylights are used for ventilation, at least 1/2 of the total~~
23 ~~required window area shall be operable. To allow for adequate ventilation, cubicles, rooms, and areas~~
24 ~~provided for the use of patrons not served directly by a window, skylight, or mechanical system of~~

1 ~~ventilation shall be constructed so that the height of the partitions does not exceed 75 percent of the~~
2 ~~floor-to-ceiling height of the area in which they are located.~~

3 (1) Toilet, dressing and massage rooms shall be provided with at least 108 lux (10 foot
4 candles) of light.

5 (e2) All electrical equipment shall be installed in accordance with the
6 requirements of the San Francisco Electrical Code.

7 (d) A room, enclosure, or designated area shall be provided where patrons can change and
8 store their clothes.

9 (e) A room, enclosure, or designated area, which is separate from the toilet, massage room(s),
10 steam room, or other common areas shared by the patrons shall be made available for each employee.

11 (f) Every portion of a massage establishment, including appliances and apparatus, shall be kept
12 clean and operated in a sanitary condition.

13 (1) Adequate and suitable space shall be provided for storage of clean linens,
14 including but not limited to, sheets, towels, apparel.

15 (2) Every massage establishment shall provide clean laundered sheets and towels
16 and shall launder them after each use and store them in a sanitary manner.

17 (3) No towels or sheets shall be laundered or dried in any massage establishment
18 unless such massage establishment is provided with laundry facilities for such laundering and drying.

19 (4) The massage establishment shall provide smooth, cleanable appropriately
20 labeled receptacles for the storage of soiled linens and paper towels.

21 (5) The massage establishment shall appropriately bag and dispose of soiled refuse.

22 (6) Every massage establishment shall thoroughly clean its wet and dry heat rooms,
23 shower compartments, and toilet rooms each business day.

24 (7) Bathtubs shall be thoroughly cleaned and sanitized after each use.

25

1 (g) Any room in which a massage establishment provides massage services shall not be used
2 for residential or sleeping purposes; provided, however, that the Director may allow such room to be
3 used for residential or sleeping purposes if the Director finds that the health and safety of the patrons
4 of the massage establishment will not be jeopardized.

5 **~~SEC. 1911. FACILITIES NECESSARY FOR SOLO PRACTITIONER MASSAGE~~**
6 **~~ESTABLISHMENT.~~**

7 ~~—No permit to conduct a solo practitioner massage establishment shall be issued unless an~~
8 ~~inspection by the Director reveals that the solo practitioner massage establishment complies with each~~
9 ~~of the following requirements:~~

10 ~~—(a) Toilet facilities shall be provided for patrons.~~

11 ~~—(b) Rooms used for toilets, tubs, steam baths, and showers, including the floors, walls, and~~
12 ~~ceilings of those rooms, shall be constructed from hard, durable, and nonabsorbent materials which~~
13 ~~are easily cleaned.~~

14 ~~—(c) Handwashing facilities shall be provided within or adjacent to toilet rooms and shall~~
15 ~~be equipped with an adequate supply of hot and cold running water under pressure.~~

16 ~~—(d) Handwashing facilities shall be readily accessible to the massage practitioner and~~
17 ~~shall be equipped with an adequate supply of hot and cold running water under pressure.~~

18 ~~—(e) A room, enclosure, or designated area shall be provided where patrons may change~~
19 ~~and store their clothes.~~

20 ~~—(f) Toilet and dressing rooms and massage rooms shall be provided with at least 108 lux~~
21 ~~(10 footcandles) of light.~~

22 ~~—(g) Smooth and cleanable containers shall be provided for soiled linens.~~

23 ~~—(h) Adequate and suitable space shall be provided for storage of clean linens, including~~
24 ~~towels, apparel, etc.~~

25 ~~—(i) All portions of the facility used by patrons shall be provided with adequate ventilation.~~

1 **SEC. ~~191229.13~~. REFERRAL OF PERMIT APPLICATION TO OTHER**
2 **DEPARTMENTS, FOR PRACTITIONERS NOT CERTIFIED BY THE STATE.**

3 The Director, within 10 days of receiving an application for a permit to operate a
4 massage establishment or solo practitioner massage establishment permit *where one or more*
5 *practitioners are not certified as a massage practitioner or therapist by the State of California pursuant*
6 *to the California Business and Professions Code*, shall refer the application to the City Department
7 of Building Inspection and the City Police, Fire, and Planning Departments. Said departments
8 shall inspect the premises proposed to be operated as a massage establishment or a solo
9 practitioner massage establishment and shall make written findings to the Director concerning
10 compliance with codes that they administer.

11 The Director shall notify the Police Department of all approved permit applications.

12 **SEC. ~~191329.14~~. ISSUANCE OF MASSAGE ESTABLISHMENT, SOLO**
13 **PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE**
14 **PERMIT, FOR PRACTITIONERS NOT CERTIFIED BY THE STATE.**

15 (a) Within 14 days following a hearing, or, if no hearing is held, within 60 business
16 days, following receipt of a completed application for a massage establishment, solo
17 practitioner massage establishment, or outcall massage service permit *where one or more*
18 *practitioners are not certified as a massage practitioner or therapist by the State of California pursuant*
19 *to the California Business and Professions Code*, the Director shall either issue the permit or mail
20 a written statement of his or her reasons for denial thereof to the applicant. If the Director
21 takes neither action, the permit shall be deemed issued.

22 (b) No massage establishment, solo practitioner massage establishment, or
23 outcall massage service permit shall be issued if the Director finds:

- 24 (1) The applicant has provided materially false documents or testimony; or
25

1 (2) The operation as proposed by the applicant would not comply with all
2 applicable laws including, but not limited to, the City Building, Planning, Housing, and Fire
3 Codes or any rule or regulation adopted by the Director pursuant to this Article; or

4 (3) Within five years immediately prior to the date of application, the applicant
5 has had any license or permit related to the practice of massage revoked; or

6 (4) The applicant and any other individual who will be directly engaged in the
7 management and operation of the massage establishment, solo practitioner massage
8 establishment, or outcall massage service has been convicted of any of the following offenses
9 or convicted of an offense outside the State of California that would have constituted any of
10 the following offenses if committed within the State of California:

11 (~~i~~A) Any felony involving the use of coercion or force and violence upon
12 another person; or

13 (~~ii~~B) Any misdemeanor sexual battery; or

14 (~~iii~~C) Any offense involving sexual misconduct with children;

15 (~~iv~~D) Pimping or pandering; or

16 (~~v~~E) Any offense requiring registration pursuant to Section 190 of the
17 California Penal Code.

18 (c) The Director may issue a permit authorized under this Section to any
19 individual convicted of one of the offenses listed in Subsection (~~h~~b)(4) of this Section if the
20 Director finds that the offense was not violent, the conviction occurred at least five years prior
21 to the date of application, and the applicant has not been convicted subsequently of one of
22 those offenses.

23 (d) The Director may refuse to issue any permit authorized under this Section in
24 any case where there is reasonable grounds to determine that the premises or the business
25 will be or are being managed, conducted, or maintained in such a manner as to endanger the

1 health or safety of the employees or patrons thereof or to coerce any employee to engage in
2 any illegal conduct.

3 (e) Notwithstanding the provisions of Section 29.1(~~t~~), the Director may issue a
4 solo practitioner massage establishment permit authorizing more than four solo massage
5 practitioners to operate out of the same place of business if the Director finds good cause
6 exists and the operation of the establishment will not have a negative impact on the
7 neighborhood.

8 (f) If an application for a permit authorized under this Section is denied, within 30
9 days of the date of receipt of the notice of denial, the applicant may appeal the decision by
10 notifying the Director in writing. The notice shall set forth in detail the ground or grounds for
11 the appeal. Within 30 days of receipt of the notice of appeal, the Director shall conduct a
12 hearing to consider the appeal. At least 10 days prior to the hearing, the Director shall notify
13 the applicant of the time and place of the hearing. The Director shall oversee the hearing,
14 provide the applicant an opportunity to speak at the hearing, and issue a ruling within 30 days
15 of its conclusion. The Director's ruling shall be final.

16 **~~SEC. 1914 OPERATING REQUIREMENTS FOR MASSAGE ESTABLISHMENT.~~**

17 ~~—(a)—Every portion of a massage establishment, including appliances and apparatus, shall~~
18 ~~be kept clean and operated in a sanitary condition.~~

19 ~~—(b)—A room, enclosure, or designated area, which is separate from the toilet, massage~~
20 ~~room, steam room, or other common areas shared by the patrons shall be made available for each~~
21 ~~employee. Individual lockers within this room shall be made available to each employee. Doors to~~
22 ~~dressing rooms shall open inward and be self-closing.~~

23 ~~—(c)—Every massage establishment shall provide clean laundered sheets and towels and~~
24 ~~shall launder them after each use and store them in a sanitary manner. No towels or sheets shall be~~
25 ~~laundered or dried in any massage establishment unless such massage establishment is provided with~~

1 ~~laundry facilities for such laundering and drying. The massage establishment shall provide~~
2 ~~appropriately labeled receptacles for the storage of soiled linens and paper towels. The massage~~
3 ~~establishment shall appropriately bag and dispose of soiled refuse.~~

4 ~~—(d)—Every massage establishment shall thoroughly clean its wet and dry heat rooms,~~
5 ~~shower compartments, and toilet rooms each business day. Bathtubs shall be thoroughly cleaned and~~
6 ~~sanitized after each use.~~

7 ~~—(e)—Any room in which a massage establishment provides massage services shall not be~~
8 ~~used for residential sleeping purposes; provided, however, that the Director may allow such room to be~~
9 ~~used for residential or sleeping purposes if the Director finds that the health and safety of the patrons~~
10 ~~of the massage establishment will not be jeopardized.~~

11 **SEC. ~~1915-29.15~~. EMPLOYMENT OF MASSAGE PRACTITIONERS.**

12 It shall be the responsibility of every ~~permittee for operator of~~ a massage ~~establishment~~
13 ~~business~~ or outcall massage service, or the employer of any individual purporting to act as a
14 massage practitioner, to ensure that such individual is certified as a massage practitioner or
15 therapist by the State of California pursuant to the California Business and Professions Code or has
16 obtained a permit pursuant to this Article.

17 **SEC. ~~1916-29.16~~. REGISTER OF EMPLOYEES.**

18 The operator of a massage establishment, solo practitioner massage establishment,
19 or outcall massage service must maintain a register of all individuals employed as massage
20 practitioners and their State of California certificate or Department permit numbers. Such register
21 shall be available for inspection by the Department of Public Health at all times during regular
22 business hours.

23 **SEC. ~~1917-29.17~~. EMPLOYMENT OF PERSONS UNDER THE AGE OF 18**
24 **PROHIBITED.**

1 It shall be unlawful for any permittee to employ any individual who is not at least 18
2 years of age.

3 **SEC. ~~1918~~ 29.18. DISPLAY OF PERMIT; HOURS OF OPERATION.**

4 (a) Every permit to operate a massage establishment or solo practitioner
5 massage establishment shall be displayed in a conspicuous place within the establishment so
6 that the permit may be readily seen by individuals entering the premises. Every permit to
7 operate an outcall massage service must be made available for inspection by the Department
8 of Public Health at all times while providing massage services.

9 (b) No massage establishment, solo practitioner massage establishment, or
10 outcall massage service shall operate or provide massage services during the hours between
11 10:00 p.m. and 7:00 a.m.

12 **SEC. ~~1919~~ 29.19. INSPECTION.**

13 (a) Any member of the Department of Public Health may make an inspection of
14 any massage establishment or solo practitioner massage establishment in the City for the
15 purpose of determining that the establishment is in compliance with the provisions of *state law*
16 *or* this Article or for the purpose of providing health and safety information to employees of the
17 establishment. The Director shall adopt regulations under Section ~~1926~~ 29.25 governing the
18 use of double doors or other structural devices that interfere with reasonable inspections and
19 do not have legitimate safety or security purposes.

20 (b) Nothing in this Section shall limit or restrict the authority of a police officer to
21 enter premises licensed under this Article (1) pursuant to a search warrant signed by a
22 magistrate and issued upon a showing of probable cause to believe that contraband is
23 present or that a crime has been committed or attempted, (2) without a warrant in the case of
24 an emergency or other exigent circumstances, or (3) as part of any other lawful entry in
25 connection with a criminal investigation or enforcement action.

1 **SEC. ~~1920~~29.20. MASSAGE ESTABLISHMENT, SOLO PRACTITIONER MASSAGE**
2 **ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE LICENSE FEE.**

3 (a) Every person, unless certified as a massage practitioner or therapist by the State of
4 California pursuant to the California Business and Professions Code, holding a massage
5 establishment, solo practitioner massage establishment, or outcall massage service permit
6 issued by the Department shall pay to the Tax Collector an annual license fee, as set forth in
7 Section ~~1927~~29.26; provided, however, that the annual license fee shall be \$10 for any person
8 holding a massage establishment permit who is over 60 years old and does not employ others
9 and whose gross receipts from the massage business operated under the authority of said
10 permit for the previous year were less than \$1,000.

11 (b) An advanced massage practitioner holding a solo practitioner massage
12 establishment permit shall not be required to pay any additional annual license fee for an
13 outcall massage service permit.

14 **SEC. ~~1921~~29.21. REVOCATION OF MASSAGE ESTABLISHMENT, SOLO**
15 **PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE**
16 **PERMIT FOR PRACTITIONERS NOT CERTIFIED BY THE STATE.**

17 (a) The Director may revoke or suspend any massage establishment, solo
18 practitioner massage establishment, or outcall massage service permit issued to massage
19 establishments where all of the practitioners are not certified as a massage practitioner or therapist by
20 the State of California pursuant to the California Business and Professions Code, after a hearing, if
21 the Director finds:

- 22 (1) The permittee has violated any of the provisions of this Article; or
23 (2) The permittee has refused to permit any duly authorized City health
24 inspector to inspect the premises or the operations therein; or
25

1 (3) The permittee has engaged in any conduct in connection with the
2 operation of the business that violates any state or local laws, or, in the case of a massage
3 establishment or outcall massage service permit, any employee of the permittee has engaged
4 in any conduct that violates any state or local laws at permittee's place of business, and the
5 permittee had or should have had actual or constructive knowledge by due diligence of the
6 illegal conduct; or

7 (4) In the case of a solo practitioner massage permit, the permittee no longer
8 holds a current, valid advanced massage practitioner permit issued by the Director; or

9 (5) The Director determines by clear and convincing evidence that such
10 business is being managed, conducted, or maintained without regard for public health or the
11 health of patrons, customers, or employees, or without due regard to proper sanitation and
12 hygiene; or

13 (6) The permittee has violated a rule or regulation adopted by the Director
14 pursuant to Section ~~1926~~29.25.

15 (b) Before any hearing is conducted under this Section, the Director shall provide
16 the permittee at least 20 days' written notice. The notice shall include the time, place, and
17 grounds for the hearing. If requested by permittee, the Director shall make available all
18 documentary evidence against permittee no later than 15 days prior to the hearing. At the
19 hearing, the permittee shall be provided an opportunity to refute all evidence against him or
20 her. The Director shall oversee the hearing and issue a ruling within 20 days of its conclusion.
21 The Director's ruling shall be final.

22 (c) The Director may suspend summarily any massage establishment, solo
23 practitioner massage establishment, or outcall massage service permit issued under this
24 Article pending a noticed hearing on revocation or suspension when in the opinion of the
25 Director the public health or safety requires such summary suspension. Any affected

1 permittee shall be given notice of such summary suspension in writing delivered to said
2 permittee in person or by registered letter.

3 **SEC. ~~1922~~ 29.22. HEARINGS.**

4 The Director may fix a time and place for a hearing on any application for a permit
5 under this Article, which shall not be held more than 45 days after the receipt of the completed
6 application, or, in the case of a permit to operate a massage establishment or solo massage
7 practitioner establishment, more than 30 days after receiving the findings required under
8 Section ~~1912~~ 29.13 of this Article.

9 **SEC. ~~1923~~ 29.23. TRANSFER OF PERMIT.**

10 No permit issued under this Article shall be transferable.

11 ~~SEC. 1924. EXISTING PERMITS.~~

12 ~~(a) All persons who possess outstanding massage establishment, outcall massage service,~~
13 ~~or masseur or masseuse permits on the effective date of this ordinance must surrender and exchange~~
14 ~~any such permits for new permits within 90 days of the effective date of this ordinance. Any such~~
15 ~~surrender and exchange shall be without fee to the permittee. From and after the 91st day after the~~
16 ~~effective date of this ordinance, all permits not surrendered and exchanged for new permits shall be~~
17 ~~void and continuance of operation under any such void permits shall be a violation of this Article.~~
18 ~~However, until issuance of the new permit, all existing permits are subject to the rules and regulations~~
19 ~~in effect at the time of the issuance of the permits.~~

20 ~~(1) A person who possesses an outstanding masseur or masseuse permit on the effective~~
21 ~~date of this ordinance may exchange that permit for a general massage practitioner permit. He or she~~
22 ~~may seek an advanced massage practitioner permit upon submitting documentation for the additional~~
23 ~~100 hours of instruction required under Section 1902(c).~~

24 ~~(2) A person who possesses an outstanding massage establishment permit on the~~
25 ~~effective date of this ordinance may exchange that permit for a massage establishment permit under~~

1 *this Article. Only a person who has obtained an advanced massage practitioner permit may obtain a*
2 *solo practitioner massage establishment permit.*

3 ~~—(b)— Any person practicing massage without a permit on the effective date of this~~
4 ~~ordinance, or who has done so prior to that date, shall be eligible to receive a general or advanced~~
5 ~~massage practitioner permit upon satisfying the requirements of Sections 1902 and 1903, or a massage~~
6 ~~establishment, solo practitioner massage establishment, or outcall massage service permit upon~~
7 ~~satisfying the requirements of Sections 1909 and 1913. Such applicants shall not be disadvantaged or~~
8 ~~penalized in the permitting process for having practiced massage without a permit prior to the effective~~
9 ~~date of this ordinance.~~

10 **SEC. ~~1925-29.24~~. BUSINESS TAX AND ZONING INFORMATION, RESOURCES FOR**
11 **MESSAGE PRACTITIONERS.**

12 (a) Upon issuing or renewing any registration or permit issued under this Article,
13 the Director and the Tax Collector shall also provide the permit-holder with general
14 information, including appropriate referrals to other City departments, regarding (1) the need
15 and procedure for registering a business with the Tax Collector, and, (2) possible zoning
16 restrictions on the operation of a massage practice.

17 (b) The Director shall provide all persons receiving a massage practitioner permit
18 with educational materials regarding their rights and informing them of available resources
19 such as health services and victim assistance, as well as emergency numbers and hotlines to
20 call for information and assistance.

21 **SEC. ~~1926-29.25~~. RULES AND REGULATIONS; COMPLAINT LINE.**

22 (a) The Director, after a noticed public hearing, may adopt rules and regulations
23 to carry out the provisions of this Article. Such rules and regulations shall take effect no sooner
24 than 15 days after the ~~meeting-public hearing~~. Violation of any such rule or regulation may be
25 grounds for administrative action against the permittee, including suspension or revocation of

1 the permit as provided in Sections ~~1907~~ 29.8 and ~~1921~~29.21 or an administrative fine as
2 provided in Section ~~1928~~29.27, but the Director shall whenever possible give the permittee a
3 reasonable opportunity to cure the violation before seeking penalties.

4 (b) The Director shall maintain a phone line for inquiries and complaints regarding
5 massage businesses and practitioners.

6 **SEC. ~~1927~~29.26. FEES.**

7 (a) The application fee for a massage establishment, as provided in Section ~~1909~~
8 29.11, shall be ~~\$394~~658. The annual license fee for a massage establishment, as provided in
9 Section ~~1920~~29.20, shall be ~~\$694~~1,173. The Fee shall be due annually on March 31 of each
10 year, pursuant to Section 76.1, Article 2 of the San Francisco Business and Tax Regulations
11 Code.

12 (b) The application fee for a solo practitioner massage establishment, as provided
13 in Section ~~1909~~29.11, shall be ~~\$394~~480. The annual license fee for a solo practitioner massage
14 establishment, as provided in Section ~~1920~~29.20, shall be ~~\$464~~579. The Fee shall be due
15 annually on March 31 of each year, pursuant to Section 76.1, Article 2 of the San Francisco
16 Business and Tax Regulations Code

17 (c) The application fee for an outcall massage services permit, as provided in
18 Section ~~1909~~29.11, shall be ~~\$278~~480. The annual license fee for an outcall massage service,
19 as provided in Section ~~1920~~29.20, shall be ~~\$231~~579. The Fee shall be due annually on March
20 31 of each year, pursuant to Section 76.1, Article 2 of the San Francisco Business and Tax
21 Regulations Code.

22 (d) An advanced massage practitioner holding a solo practitioner massage
23 establishment permit shall not be required to pay any additional permit or annual license fee
24 for an outcall massage service permit.

1 (e) Beginning with fiscal year 2008-2009, fees set forth in this Article may be
2 adjusted each year, without further action by the Board of Supervisors, asset forth in this
3 Section.

4 Not later than April 1, the Director shall report to the Controller the revenues
5 generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as
6 well as any other information that the Controller determines appropriate to the performance of
7 the duties set forth in this Section.

8 Not later than May 15, the Controller shall determine whether the current fees
9 have produced or are projected to produce revenues sufficient to support the costs of
10 providing the services for which the fees are assessed and that the fees will not produce
11 revenue which is significantly more than the costs of providing the services for which the fees
12 are assessed.

13 The Controller shall, if necessary, adjust the fees upward or downward for the
14 upcoming fiscal year as appropriate to ensure that the program recovers the costs of
15 operation without producing revenue which is significantly more than such costs. The adjusted
16 rates shall become operative on July 1.

17 **SEC. ~~1928~~29.27. VIOLATIONS AND ADMINISTRATIVE PENALTIES.**

18 (a) Any person who violates any provision of this Article or any rule or regulation
19 adopted pursuant to Section ~~1926~~29.25 may, after being provided notice and an opportunity to
20 be heard, be subject to an administrative fine not to exceed \$1,000 for the first violation of any
21 provision of this Article or any rule or regulation in a 24 month period, \$2,500 for the second
22 violation of any provision of this Article or any rule or regulation in a 24-month period, and
23 \$5,000 for the third and subsequent violations of any provision of this Article or any rule or
24 regulation in a 24-month period; provided, however, that the schedule of administrative fines
25 for a massage practitioner shall be as follows: not to exceed \$250 for the first violation of any

1 provision of this Article or a rule or regulation in a 24-month period, \$500 for the second
2 violation of any provision of this Article or any rule or regulation in a 24-month period, and
3 \$1,000 for the third and subsequent violations of any provision of this Article or any rule or
4 regulation in a 24-month period.

5 (b) Any permittee who knowingly employs a massage practitioner who is not in
6 possession of a valid permit or who allows such a massage practitioner to perform, operate,
7 or practice in the permittee's place of business may, after being provided notice and an
8 opportunity to be heard, be subject to an administrative fine not to exceed \$1,000 for the first
9 violation in a 24-month period, \$2,500 for the second violation in a 24-month period, and
10 \$5,000 for the third and subsequent violations in a 24-month period.

11 (c) In determining the amount of the administrative fine, the hearing officer shall
12 consider any relevant circumstance presented by any of the parties, including but not limited
13 to the nature and seriousness of the violation, the number of violations, the persistence of the
14 violation, the length of time over which the violation occurred, the willfulness of the violation,
15 and the impacts of the violation on the community.

16 (d) Administrative fines collected under this Section shall be used to support the
17 Department of Public Health and its Health Code enforcement functions.

18 (e) Nothing in this Section shall preclude the prosecution of anyone under Health
19 Code Section ~~1928.2~~29.29, the laws of the State of California or the laws of the United States
20 of America.

21 **SEC. ~~1928.129.28~~. COST RECOVERY.**

22 Any person who is assessed an administrative fine or whose permit is suspended or
23 revoked under this Article, regardless of whether any fine, suspension or revocation is held in
24 abeyance, shall be liable to the City for its costs incurred in enforcing this Article including but
25 not limited to the costs of inspection, investigation, administration, hearing officer,

1 administrative proceedings, court proceedings, monitoring and attorneys' fees. Within ten
2 business days of the termination of the administrative hearing or other proceeding, the
3 Department of Public Health shall calculate the amount of costs.

4 **SEC. ~~1928.229.29.~~ VIOLATIONS AND CRIMINAL PENALTIES.**

5 (a) Any permittee, as defined in Section ~~1900(i)~~29.1, of a massage establishment
6 or outcall massage service or any employer of a massage practitioner who shall violate Health
7 Code Section ~~1901~~ 29.2 which requires a permit to engage in the practice of massage, Health
8 Code Section ~~1905~~ 29.6 which requires presentation of an identification card to any City health
9 inspector, Health Code Section ~~1908~~29.10 which requires *practitioners not certified by the State*
10 *of California pursuant to the California Business and Professions Code to obtain* a permit to operate
11 a massage establishment, solo practitioner massage establishment, or outcall massage
12 service, Health Code Section ~~1914(e)~~29.12(g) which prohibits the use of any room in which
13 massage services are provided to be used as a sleeping room, Health Code Section ~~1911~~
14 29.15 which requires every permit holder or employer to ensure that a massage practitioner,
15 *who is not certified by the State of California,* has obtained a permit, Health Code Section ~~1916~~
16 29.16 which requires a register of practitioners to be available for inspection, Health Code
17 Section ~~1917~~29.17 which prohibits the employment of any individual under the age of 18,
18 Health Code Section ~~1918~~29.18, which requires display of a permit and prohibits operation
19 between the hours of 10 p.m. and 7 a.m., or any rule or regulation adopted pursuant to
20 Section ~~1926~~29.25, shall be guilty of a misdemeanor and upon conviction shall be punished by
21 a fine not to exceed \$1,000 or by imprisonment in the County Jail not to exceed six months, or
22 by both. A person convicted of violating this Section shall be deemed guilty of a separate
23 offense for every day such violation shall continue.

24 (b) Nothing in this Section shall preclude the prosecution of anyone under the
25 laws of the State of California or of the United States of America.

1 **SEC. ~~1929~~29.30. COOPERATIVE EFFORTS WITH LAW ENFORCEMENT.**

2 The Director of Public Health shall work with the Chief of Police on issues of
3 common concern affecting the massage industry, such as protections against violence in
4 massage establishments, crimes against massage practitioners, forced labor, or trafficking.

5 During the six-month period between adoption of this Article and its effective date,
6 the Director of Public Health shall work with the Chief of Police to develop procedures to verify
7 that permit applicants do not have prior criminal convictions that would disqualify the
8 applicants from receiving a permit under this Article.

9 **SEC. ~~1930~~29.31. DISCLAIMER.**

10 In regulating massage establishments and massage services as provided in this
11 Article, the City is assuming an undertaking only to promote the general welfare. It is not
12 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
13 is liable in money damages to any person who claims that such breach proximately caused
14 injury.

15 **SEC. ~~1931~~29.32. SEVERABILITY.**

16 If any of the provisions of this Article or the application thereof to any person or
17 circumstance is held invalid, the remainder of this Article, including the application of such part
18 or provisions to persons or circumstances other than those to which it is held invalid, shall not
19 be affected thereby and shall continue in full force and effect. To this end, the provisions of
20 this Article are severable.

21 Section 3. Effective Date. This ordinance shall become effective 30 days from the
22 date of passage.

23 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to
24 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
25 punctuation, charts, diagrams, or any other constituent part of the Health Code that are

1 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
2 Board amendment deletions in accordance with the "Note" that appears under the official title
3 of the legislation.

4

5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: _____
8 VIRGINIA DARIO ELIZONDO
9 Deputy City Attorney

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