

1 [Health Code - Licensing and Regulation of Massage Establishments and Practitioners]

2

3 **Ordinance amending the Health Code to require massage practitioners licensed by San**  
4 **Francisco to wear photo identification cards when working; deny Massage**  
5 **Establishment permits to applicants convicted of specified crimes; to provide an**  
6 **appeal process for persons denied a Massage Establishment permit; to establish**  
7 **health and safety requirements for all Massage Establishments; to establish penalties**  
8 **for violations of Article 29 governing Massage Practitioners and Massage**  
9 **Establishments; to require notice of violations be sent to the owner(s) of property**  
10 **where Massage Establishments are located; and making environmental findings.**

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12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
14 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
15 **Board amendment additions** are in double-underlined Arial font.  
16 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
17 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
18 subsections or parts of tables.

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

17 Section 1. Environmental Findings

18 The Planning Department has determined that the actions contemplated in this ordinance  
19 comply with the California Environmental Quality Act (California Public Resources Code  
20 Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
21 Supervisors in File No. 130789 and is incorporated herein by reference.

22 Section 2. The Health Code is hereby amended by revising Section(s) 1905, 1909, 1910,  
23 1928, to read as follows:

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1           **SEC. ~~1905~~29.6. IDENTIFICATION CARD FOR PRACTITIONERS NOT CERTIFIED BY**  
2 **THE STATE.**

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

11           **SEC. ~~1909~~29.11. APPLICATION FOR MESSAGE ESTABLISHMENT, SOLO**  
12 **PRACTITIONER MESSAGE ESTABLISHMENT, OR OUTCALL MESSAGE SERVICE**  
13 **PERMIT FOR PRACTITIONERS NOT CERTIFIED BY THE STATE.**

14           (a) *Unless certified as a massage practitioner or therapist by the State of California*  
15 *pursuant to the California Business and Professions Code, ~~Every~~ applicant for a massage*  
16 *establishment, solo practitioner massage establishment, or outcall massage service permit*  
17 *shall file an application with the Director upon a form provided by the Director and pay a non-*  
18 *refundable application fee, as set forth in Section ~~1927~~29.26.*

- 19           (b) The application shall set forth, under penalty of perjury, the following:
- 20           (1) The exact nature of the services to be rendered;
- 21           (2) The address of the proposed place of business and facilities thereof;
- 22           (3) The number of individuals to be employed by the business, and, in the  
23 case of a solo massage practitioner establishment, the names of any massage practitioners  
24 who shall operate under that permit;
- 25           (4) The name, residence address, and date of birth of each applicant;

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

4 (6) All felony or misdemeanor convictions for the applicant within the preceding  
5 five years, including, but not limited to, felony sexual assault; sexual battery (Cal. Penal Code 243.4),  
6 rape (Cal. Penal Code 261); statutory rape (Cal. Penal Code 261.5); prostitution offenses related to  
7 pimping (Cal. Penal Code 266 and applicable subsections); sex crimes for which registration is  
8 required under the Sex Offender Registration Act (Cal Penal Code 290); loitering for lewd or  
9 lascivious purposes (Cal. Penal Code 647(d), 647(h)); and human trafficking (Cal. Penal Code 236.1).

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

14 (d) If an applicant for a massage establishment or outcall massage service permit  
15 is a corporation, the name of the corporation shall be set forth exactly as shown in its articles  
16 of incorporation together with the names and residence addresses of each of the officers,  
17 directors, and each stockholder holding more than 10 percent of the stock of the corporation.  
18 If the application is a partnership, the application shall set forth the name and the residence  
19 address of each of the partners, including limited partners. If one or more of the partners is a  
20 corporation, the provisions of this Section pertaining to corporate applicants applies. The  
21 same permit and criminal history information required of individual applicants, set forth in  
22 subsection (b)(6), above, shall be provided for each officer, director, and stockholder holding  
23 more than 10 percent of the stock of the corporation, or for each partner, including limited  
24 partners.

1 (e) In addition to the information required under subsections (b) and (c), an  
2 applicant for a solo practitioner massage establishment permit shall provide proof that he or  
3 she holds a current, valid advanced massage practitioner permit issued by the Director under  
4 Section ~~1901~~ 29.2.

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

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

10 (h) Within 14 days following a hearing, or, if no hearing is held, within 60 business days  
11 following receipt of a completed application for a permit for a massage establishment that does not  
12 solely employ practitioners certified as a massage practitioner or therapist by the State of California  
13 pursuant to the California Business and Professions Code the Director shall either issue the permit or  
14 mail a written statement of his or her reasons for denial thereof to the applicant. If the Director takes  
15 neither action, the permit shall be deemed issued.

16 (i) No massage establishment permit shall be issued if the Director finds:

17 (1) The applicant has provided materially false documents or testimony; or

18 (2) The applicant has not complied fully with the provisions of this Article; or

19 (3) Within five years immediately prior to the date of application, the applicant has had any  
20 license or permit related to the operation of a massage establishment revoked; or

21 (4) The applicant has been convicted of any of the following offenses or convicted of an offense  
22 outside the State of California that would have constituted any of the following offenses if committed  
23 within the State of California, within the last five years: felony sexual assault; sexual battery (Cal.  
24 Penal Code 243.4), rape (Cal. Penal Code 261); statutory rape (Cal. Penal Code 261.5); prostitution  
25 offenses related to pimping (Cal. Penal Code 266 and applicable subsections); sex crimes for which

1 registration is required under the Sex Offender Registration Act (Cal Penal Code 290); loitering for  
2 lewd or lascivious purposes (Cal. Penal Code 647(d), 647(h)); and human trafficking (Cal. Penal Code  
3 236.1).

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

11 **SEC. ~~191029.12.~~ OPERATING REQUIREMENTS FOR MASSAGE**  
12 **ESTABLISHMENTS.**

13 No permit to conduct a massage establishment shall be issued unless an inspection by the  
14 Director reveals that the All massage establishments must comply with each of the following  
15 health and safety requirements:

16 (a) Toilet rooms shall be provided for patrons in convenient locations.

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

20 (2) Plumbing fixtures in toilet rooms as well as rooms used for, tubs, steam baths, and  
21 showers shall be installed in accordance with the San Francisco Plumbing Code.

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

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

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

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

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

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

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

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

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

20                   (2) Handwashing facilities shall be readily accessible to the massage practitioner.

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

1 ~~provided for the use of patrons not served directly by a window, skylight, or mechanical system of~~  
2 ~~ventilation shall be constructed so that the height of the partitions does not exceed 75 percent of the~~  
3 ~~floor-to-ceiling height of the area in which they are located.~~

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

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

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

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

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

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

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

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

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

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

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

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

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           (h) Massage practitioners shall not engage in lewd or lascivious acts on the premises of a  
6 massage establishment during business hours, including but not limited to: the performance of acts, or  
7 simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, copulation (oral, anal or  
8 vaginal), flagellation; the actual or simulated caressing or fondling by one adult human being of the  
9 breast, anus or genitals of another adult human being; the actual or simulated displaying of the pubic  
10 hair, anus, vagina, penis, vulva, buttocks, areola, or any other external genitalia of the human body.

11           (i) Massage Establishment doors shall remain unlocked during business hours, except when  
12 there is no staff available to ensure security for clients and massage staff who are behind closed doors.

13           (j) No alcoholic beverages or drugs may be sold, served, used, or possessed on the  
14 premises of any massage establishment during business hours. "Alcoholic beverage" includes a  
15 mixture of one or more alcoholic beverages ingested separately or as a mixture as defined in Section  
16 23004 of the California Business and Professions Code.. "Drug" shall include all narcotics, drugs, or  
17 controlled substances as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the  
18 California Health and Safety Code.

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

20           (a) Any person who violates any provision of this Article or any rule or regulation  
21 adopted pursuant to Section ~~1926~~ 29.25 may, after being provided notice and an opportunity to  
22 be heard, be subject to the following monetary penalties and/or permit penalties: an administrative  
23 fine not to exceed \$1,000 for the first violation of any provision of this Article or any rule or regulation  
24 in a 24 month period, \$2,500 for the second violation of any provision of this Article or any rule or  
25 regulation in a 24-month period, and \$5,000 for the third and subsequent violations of any provision of

1 ~~this Article or any rule or regulation in a 24-month period; provided, however, that the schedule of~~  
2 ~~administrative fines for a massage practitioner shall be as follows: not to exceed \$250 for the first~~  
3 ~~violation of any provision of this Article or a rule or regulation in a 24-month period, \$500 for the~~  
4 ~~second violation of any provision of this Article or any rule or regulation in a 24-month period, and~~  
5 ~~\$1,000 for the third and subsequent violations of any provision of this Article or any rule or regulation~~  
6 ~~in a 24-month period.~~

7 ~~(b) Any permittee who knowingly employs a massage practitioner who is not in possession of~~  
8 ~~a valid permit or who allows such a massage practitioner to perform, operate, or practice in the~~  
9 ~~permittee's place of business may, after being provided notice and an opportunity to be heard, be~~  
10 ~~subject to an administrative fine not to exceed \$1,000 for the first violation in a 24-month period,~~  
11 ~~\$2,500 for the second violation in a 24-month period, and \$5,000 for the third and subsequent~~  
12 ~~violations in a 24-month period.~~

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

18 (1) Establishment Operating Without a Permit from the San Francisco Department  
19 of Public Health.

20 (A) Administrative fine: Up to \$1,000 per day of operating without a permit;  
21 and

22 (B) Permit penalty: Revocation, and Massage Establishment location and  
23 permittee are ineligible for a new permit from the San Francisco Department of Public Health for 180  
24 days.

25 (C) Repeat violations: Same penalties as (a)(1)(A) and (a)(1)(B).

1                   (2) Establishment Violating Conditions of California Business and Professions  
2 Code sections 4600-4620 and all Implementing Regulations.

3                   (A) Administrative fine: Up to \$1,000 per day of operating without a permit;  
4 and

5                   (B) Permit Penalty: Massage Establishment location and permittee are  
6 ineligible for a permit from the San Francisco Department of Public Health for 180 days.

7                   (C) Repeat violations: Same penalties as (a)(3)(A) and (a)(3)(B)

8                   (3) Massage Establishment Employing Underage Practitioner.

9                   (A) Administrative fine: None.

10                   (B) Permit penalty: Mandatory 60-120 days suspension of Massage  
11 Establishment permit.

12                   (C) Repeat violations: Revocation for second occurrence within 36 months of  
13 first occurrence and Massage Establishment location and permittee are ineligible for a new permit for  
14 180 days.

15                   (4) Solicitation Charges or Convictions, as Defined by California Penal Code  
16 section 647 and/or San Francisco Police Code section 225, for anyone working at Massage  
17 Establishment.,

18                   (A) Administrative fine: \$5,000 to be paid by Massage Establishment  
19 permittee; and

20                   (B) Permit penalty: Mandatory 60-120 days suspension of Massage  
21 Establishment permit.

22                   (C) Repeat violations: Revocation; Permittee ineligible for a new Massage  
23 Establishment permit from the San Francisco Department of Public Health, at any location.

24                   (5) Trafficking Charges or Convictions, as Defined by California Penal Code  
25 Section 236.1, for anyone working at Massage Establishment.

- 1                                    (A) Administrative fine: None.
- 2                                    (B) Permit penalty: Revocation and Permittee ineligible for a new Massage  
3 Establishment permit, at any location.
- 4                                    (C) Repeat violations: Same penalty as (a)(5)(B).
- 5                                    (6) Establishment Knowingly Employing Unlicensed Practitioner.
- 6                                    (A) Administrative fine: \$1,000 to be paid by Massage Establishment  
7 permittee.
- 8                                    (B) Permit penalty: None.
- 9                                    (C) Repeat violations: 15-30 days suspension and up to \$2,500 fine for 2nd  
10 occurrence within a 24 month period; 30-60 days suspension or permit revocation, and up to \$5,000  
11 fine for 3rd occurrence within 24 months.
- 12                                   (7) Establishment Used for Residential Sleeping Purposes, Without Authorization by  
13 the City and County of San Francisco Director of Public Health.
- 14                                    (A) Administrative fine: Up to \$1,000.
- 15                                    (B) Permit penalty: None.
- 16                                    (C) Repeat violations: 15-30 days suspension and up to \$2,500 fine and for  
17 2nd occurrence within 24 months; 30-60 days suspension and up to \$5,000 fine for 3rd occurrence  
18 within 24 months.
- 19                                    (8) Presence of beds instead of massage tables.
- 20                                    (A) Administrative fine: None.
- 21                                    (B) Permit penalty: Notice of violation only.
- 22                                    (C) Repeat violations: Up to \$1,000 fine for 2nd occurrence within 24  
23 months; 15-30 day suspension and up to \$2,500 fine and for 3rd occurrence within 24 months.
- 24                                    (9) Massage Practitioner Wearing Improper Attire.
- 25

1                                   (A) Administrative fine: Up to \$250 to be paid by practitioner and up to \$250  
2 per person to be paid by Massage Establishment permittee; and,

3                                   (B) Permit penalty: Notice of violation.

4                                   (C) Repeat violations: Up to \$500 fine for 2nd and each subsequent  
5 occurrence and 60 day suspension for practitioner and 60 day suspension per person for Massage  
6 Establishment permit.

7                                   (10) Sanitation Issues.

8                                   (A) Administrative fine: None.

9                                   (B) Permit penalty: Notice of violation.

10                                  (C) Repeat violations: Up to \$250 fine and 60 day suspension for Massage  
11 Establishment permit.

12                                  (11) Massage Establishment Operating Past 10 p.m.

13                                  (A) Administrative fine: Up to \$1,000.

14                                  (B) Permit penalty: None.

15                                  (C) Repeat violations: 15-30 days suspension and up to \$2,500 for 2nd  
16 occurrence within 24 months; 30-60 days suspension and up to \$5,000 fine for 3rd and each  
17 subsequent occurrence within 24 months.

18                                  (12) Practicing Massage Without a Permit.

19                                  (A) Administrative fine: \$250 fine.

20                                  (B) Permit penalty: None.

21                                  (C) Repeat violations: \$500 fine for 2nd occurrence within 24 months;  
22 \$1,000 fine for 3rd and each subsequent occurrence within 24 months, and Practitioner ineligible for  
23 San Francisco Department of Public Health permit for 180 days.

24                                  (13) Anyone performing sex acts on Massage Establishment premises during business  
25 hours.



1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Health  
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
3 additions, and Board amendment deletions in accordance with the "Note" that appears under  
4 the official title of the ordinance.

5 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word  
6 of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any  
7 court of competent jurisdiction, such decision shall not affect the validity of the remaining  
8 portions of this ordinance. The Board of Supervisors hereby declares that it would have  
9 passed this ordinance and each and every section, subsection, sentence, clause, phrase, and  
10 word not declared invalid or unconstitutional without regard to whether any other portion of  
11 this ordinance would be subsequently declared invalid or unconstitutional.

12

13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15 By: \_\_\_\_\_  
16 VIRGINIA DARIO ELIZONDO  
17 Deputy City Attorney

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