

1 [Health Code - Massage Permit Requirements]

2
3 **Ordinance amending the Health Code to exempt applicants for Massage Establishment,**
4 **Sole Practitioner Massage Establishment, and Outcall Massage Service permits from**
5 **fingerprinting requirements if the applicant holds a valid license issued by the**
6 **California Massage Therapy Council; remove certain departments (Building Inspection,**
7 **Police, Fire) from the list of departments that the Department of Public Health (DPH)**
8 **must notify regarding new Massage Establishment permit applications, and remove all**
9 **notification requirements to departments in cases of change in ownership of Massage**
10 **Establishments or Sole Practitioner Massage Establishments; remove the requirement**
11 **that departments receiving notice of new Massage Establishment permit applications**
12 **conduct inspections with written findings of the applying massage establishment;**
13 **allow Massage Establishments to install an exterior door keyless lock system upon**
14 **prior DPH approval and upon providing DPH with a valid and up-to-date access code;**
15 **and remove from the Health Code the inoperative local application process for new**
16 **Massage Practitioner permits; include solicitation of lewd conduct or prostitution by**
17 **Massage Practitioners as conduct subject to penalty under this Article; and clarify that**
18 **violations of certain sections of the Health Code regulating Massage Practitioners are**
19 **also subject to enforcement as public nuisances.**

20
21 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
22 **Additions to Codes** are in *single-underline italics Times New Roman font*.
23 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
24 **Board amendment additions** are in double-underlined Arial font.
25 **Board amendment deletions** are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

1 Section 1. Article 29 of the Health Code is hereby amended by deleting Section 29.11
2 and revising Sections 29.17, 29.26, 29.28, 29.31, and 29.45, to read as follows:

3 **~~SEC. 29.11. APPLICATION FOR MASSAGE PRACTITIONER PERMIT.~~**

4 ~~—(a) **Permit Application.** Every applicant for a Massage Practitioner permit shall:~~

5 ~~—(1) File an application with the Director upon a form provided by the Director;~~

6 ~~—(2) Provide a complete set of fingerprints in the manner required by the Director for the
7 purpose of undergoing a criminal background check; and~~

8 ~~—(3) Pay a non-refundable application fee as set forth in Section 29.40.~~

9 ~~—(b) **Applicant Information.** The application form shall require the applicant to provide,
10 under penalty of perjury, the following information:~~

11 ~~—(1) The applicant's name and residence address;~~

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

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

15 ~~—(4) The applicant's height, weight, and color of hair and eyes;~~

16 ~~—(5) The applicant's work history for the five years immediately prior to the date of
17 application;~~

18 ~~—(6) All permits, certificates, or licenses related to the practice of Massage currently or
19 formerly held by the applicant in San Francisco or elsewhere, including any discipline imposed by the
20 issuing authority and a statement whether the applicant is currently the subject of a disciplinary
21 process;~~

22 ~~—(7) All felony or misdemeanor convictions; and~~

23 ~~—(8) Any additional information as required by the Director.~~

24 ~~—(c) **Minimum Educational Requirements.** An applicant for a Massage Practitioner permit
25 shall provide, in a form acceptable to the Director, documentation showing that the applicant has~~

1 *completed not less than 500 hours of instruction in Massage and related subjects at an Approved*
2 *Massage School.*

3 ~~—(d) **Proficiency Test.** The Director shall administer a test to all applicants, in each~~
4 ~~applicant's own language, to confirm basic proficiency in Massage before issuing a permit.~~

5 ~~—(e) **Deadline for submission of supporting documentation.** After reviewing an applicant's~~
6 ~~application, the Director shall notify the applicant in writing if the application is incomplete. If the~~
7 ~~Director deems the application to be incomplete, the applicant shall supply the information or~~
8 ~~documentation that is required for the application to be deemed complete. The applicant shall have 60~~
9 ~~days from the date that the Director provides notification that the application is incomplete to provide~~
10 ~~all required information and/or documentation. If the applicant does not provide such information~~
11 ~~within 60 days, the application will be deemed abandoned and will not receive further consideration.~~

12 **SEC. 29.17. MASSAGE PRACTITIONER CONDUCT REQUIREMENTS.**

13 (a) Required Attire. Massage Practitioners shall remain fully clothed while
14 administering massage or otherwise present in a part of the Massage Establishment to which
15 the public has access (e.g., massage rooms, reception areas, publicly accessible restrooms),
16 including premises designated by the client through an Outcall Massage Service. The
17 Massage Practitioner's attire shall not include: (1) attire that is transparent, see-through, or
18 that substantially exposes the Practitioner's undergarments; (2) swim attire, unless the
19 Practitioner is providing a water-based massage modality that has been approved by CAMTC;
20 or (3) attire that exposes the individual's breasts, buttocks, or genitals.

21 (b) Lewd Conduct and Prostitution Prohibited. Consistent with California Penal Code
22 Section 647, as may be amended, and San Francisco Police Code Section 225, as may be
23 amended, Massage Practitioners shall not engage in lewd conduct or prostitution on business
24 premises, including locations designated by the client through an Outcall Massage Service.
25 Lewd acts conduct includes, but are-is not limited to: the performance of acts or simulated

1 acts of sexual intercourse, masturbation, bestiality, copulation (oral, anal or vaginal), or
2 flagellation; the actual or simulated caressing or fondling by one adult human being of the
3 anus or genitals of another adult human being; the actual or simulated displaying of the pubic
4 hair, anus, vagina, penis, vulva, buttocks, areola, or any other external genitalia of the human
5 body.

6 (c) Solicitation of Lewd Conduct and Prostitution Prohibited. Consistent with the
7 California Penal Code Section 647, as may be amended, and San Francisco Police Code
8 Section 225, as may be amended, Massage Practitioners shall not engage in the solicitation
9 of lewd conduct or prostitution, on business premises, including locations designated by the
10 client through an Outcall Massage Service.

11 **SEC. 29.26. APPLICATION FOR MESSAGE ESTABLISHMENT, SOLE**
12 **PRACTITIONER MESSAGE ESTABLISHMENT, OR OUTCALL MESSAGE SERVICE**
13 **PERMIT.**

14 (a) **Application Requirements.** To apply for a Massage Establishment, Sole
15 Practitioner Massage Establishment, or Outcall Massage Service permit, the Owner shall:

- 16 (1) File an application with the Director upon a form provided by the Director;
- 17 (2) For the purpose of undergoing a criminal background check, Provide a complete
18 set of fingerprints in the manner required by the Director from any person with an ownership
19 interest in the Massage Business *who has not otherwise provided documentation showing that they*
20 *are a CAMTC Certified Practitioner for the purpose of a undergoing a criminal background check; and*
- 21 (3) Pay a non-refundable application fee, as set forth in Section 29.41; ~~and~~
- 22 (4) ~~Permit inspection of any Massage facilities proposed to be operated under the permit~~
23 ~~by all relevant City departments, including but not limited to the Department of Building Inspection, the~~
24 ~~Planning Department, and the Fire Department.~~

25 * * * *

1 **SEC. 29.28. REFERRAL OF MASSAGE ESTABLISHMENT AND SOLE**
2 **PRACTITIONER MASSAGE ESTABLISHMENT PERMIT APPLICATIONS TO OTHER**
3 **DEPARTMENTS; POLICE DEPARTMENT NOTIFICATION.**

4 (a) **Code Compliance.** The Director, within 10 days of receiving an application for a
5 permit to operate a Massage Establishment or Sole Practitioner Massage Establishment, shall
6 refer the application to the ~~City Department of Building Inspection and the City Police, Fire, and~~
7 ~~Planning Departments. Said departments shall inspect the facilities proposed to be operated as a~~
8 ~~Massage Establishment or a Sole Practitioner Massage Establishment and shall make written findings~~
9 ~~to the Director concerning compliance with codes that they administer. The Director's referral~~
10 ~~obligation under this subsection (a) does not apply in cases where a change of ownership has occurred~~
11 ~~at a pre-existing Massage Establishment or Sole Practitioner Massage Establishment.~~

12 (b) **Law Enforcement.** The Director shall notify the Police Department of all
13 approved and denied Massage Business permit applications.

14 **SEC. 29.31. OPERATING REQUIREMENTS.**

15 Massage Establishments, Sole Practitioner Massage Establishments, and Outcall
16 Massage Services must comply with the following operating requirements to the extent
17 applicable:

18 * * * *

19 (g) **Locks.** Doors that permit entry into any treatment room ~~may~~ shall not be
20 equipped with locks or any device designed to prevent, impede, or delay entry into a room.
21 Massage Establishment exterior doors may be equipped with locks, but shall remain unlocked
22 while the Massage Establishment is open for business. Exterior doors may remain locked while
23 the Massage Establishment is open for business only if (1) there is no more than one employee
24 or independent contractor on the premises of the Massage Establishment, exclusive of the
25 Establishment Owner, or (2) if the Director has approved a request from the Massage Establishment

1 to install an exterior door keyless lock system with access code. Massage Establishments that remain
2 locked while open for business, using a pre-approved exterior door keyless lock system, shall, before
3 operation of such system, provide the Department with a valid access code or other method of
4 unlocking the system and, further, shall immediately inform the Department of any changes to the
5 access code or other method of unlocking the system. The Massage Establishment shall at all times
6 ensure the keyless lock system is in good repair and able to be unlocked by the Department. It shall be
7 a violation of this subsection (g) if at any time during the Massage Establishment’s operating hours the
8 Department cannot gain entry using the provided access code or other method of unlocking.

9 * * * *

10 **SEC. 29.45. VIOLATIONS AND ADMINISTRATIVE PENALTIES.**

11 (a) Any person who violates any provision of this Article 29 or any rule or regulation
12 adopted pursuant to Section 29.2 may, after being provided notice and an opportunity to be
13 heard, be subject to the following monetary and permit penalties. The Director may impose
14 administrative fines and/or permit penalties that exceed those listed in this Section 29.45
15 where the Director finds that such higher fines and/or penalties are necessary or appropriate
16 to protect and promote the health and well-being of a Massage Business’ employees,
17 customers, and/or neighbors.

18 * * * *

19 (3) **Solicitation of Lewd Conduct or Prostitution in Violation of Section**
20 **29.17; Solicitation Citations, Charges, or Convictions, as Defined by California Penal**
21 **Code Section 647(a) or (b) and/or San Francisco Police Code Section 225, for Anyone**
22 **Working at Massage Establishment.**

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

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

3 (C) Repeat violations: Revocation; permittee ineligible for a subsequent
4 Massage Establishment permit at any location for a period of two years.

5 * * * *

6 (17) **Equipping Interior Doors with Locks or Locking Devices, or Locking**
7 **Exterior Doors, in violation of Section 29.31(g).**

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

9 (B) Permit penalty: 15-30 day suspension of Massage Business Permit.

10 (C) Repeat violations: 30-60 day suspension, ~~and~~ up to \$2,500 *fine*,
11 *removal of any keyless lock system, and rescission of the Director's approval to continue using a*
12 *keyless lock system* for second occurrence; 60-90 day suspension and up to \$5,000 fine for third
13 and each subsequent occurrence.

14 * * * *

15 (g) Violation of Certain Health Code Sections as Nuisances. As stated in Health
16 Code Section 581(b)(15), any violation of Sections 29.10, 29.17, 29.25, 29.27, or 29.31 of this
17 Article 29 shall be considered a nuisance and may be subject to enforcement, penalty, or
18 other action under Article 11 of this Code.

19
20 Section 2. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

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8 APPROVED AS TO FORM:
9 DAVID CHIU, City Attorney

10 By: /s/ Michael Gerchow
11 MICHAEL GERCHOW
12 Deputy City Attorney

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