File No. 221160 **Committee Item No.** 3
Board Item No. 1

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Public Safety and Ngbh Services **Date:** May 11, 2023
Board of Supervisors Meeting: **Date:** June 6, 2023

Cmte Board

Cmte	Board		
☐	☐	**Motion**	
☐	☐	**Resolution**	
☒	☒	**Ordinance**	**- VERSION 2**
☒	☒	**Legislative Digest**	**- VERSION 2**
☐	☐	**Budget and Legislative Analyst Report**	
☐	☐	**Youth Commission Report**	
☐	☐	**Introduction Form**	
☐	☐	**Department/Agency Cover Letter and/or Report**	
☐	☐	**MOU**	
☐	☐	**Grant Information Form**	
☐	☐	**Grant Budget**	
☐	☐	**Subcontract Budget**	
☐	☐	**Contract / DRAFT Mills Act Agreement**	
☐	☐	**Form 126 – Ethics Commission**	
☐	☐	**Award Letter**	
☐	☐	**Application**	
☐	☐	**Public Correspondence**	

OTHER

☒	☒	Referrals FYI and SBC – November 18, 2022
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	

Prepared by: John Carroll **Date:** May 5, 2023
Prepared by: John Carroll **Date:** May 18, 2023
Prepared by: **Date:**

AMENDED IN COMMITTEE
4/27/2023

FILE NO. 221160 ORDINANCE NO.

[Health Code - Massage Permit Requirements]

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

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
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:

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

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

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

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

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

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

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

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

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

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

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

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

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

~~*(7) All felony or misdemeanor convictions; and*~~

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

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

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

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

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

SEC. 29.17. MASSAGE PRACTITIONER CONDUCT REQUIREMENTS.

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

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

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

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

SEC. 29.26. APPLICATION FOR MASSAGE ESTABLISHMENT, SOLE PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE PERMIT.

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

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

(2) *For the purpose of undergoing a criminal background check,* ~~*P*~~*p*rovide a complete set of fingerprints in the manner required by the Director from any person with an ownership interest in the Massage Business *who has not otherwise provided documentation showing that they are a CAMTC Certified Practitioner* ~~*for the purpose of a undergoing a criminal background check*~~; *and*

(3) Pay a non-refundable application fee, as set forth in Section 29.41.~~*; and*~~

~~*(4) Permit inspection of any Massage facilities proposed to be operated under the permit by all relevant City departments, including but not limited to the Department of Building Inspection, the Planning Department, and the Fire Department.*~~

*** * * ***

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

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

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

SEC. 29.31. OPERATING REQUIREMENTS.

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

*** * * ***

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

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

*** * * ***

SEC. 29.45. VIOLATIONS AND ADMINISTRATIVE PENALTIES.

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

*** * * ***

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

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

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

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

*** * * ***

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

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

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

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

*** * * ***

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

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

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

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ Michael Gerchow
MICHAEL GERCHOW
Deputy City Attorney

N:\LEGANA\AS2023\2300043\01673164.DOCX

FILE NO. 221160

AMENDED LEGISLATIVE DIGEST

Amended in Committee – April 27, 2023

[Health Code - Massage Permit Requirements]

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

Existing Law

The existing law, codified at Article 29 of the Health Code, establishes the requirement with limited exceptions that, until January 1, 2019, people administering massages for compensation must have obtained a permit from the Director of Health (Director). Existing law exempted from this permitting requirement massage practitioners holding valid California Massage Therapy Council (CAMTC) certification, licensed health care professionals, and other licensed professionals who provide massage services to the extent permitted under their license.

Existing law also requires anyone with an ownership interest in a massage business, including sole practitioner and outcall massage businesses, to provide the Director a full set of fingerprints to carry out a background check while applying for a permit for their business. Existing law requires these businesses to allow relevant City departments to inspect massage facilities. Existing law also requires the Director to refer massage businesses permit applications to the following City departments: Building Inspection, Police, Fire, and Planning. These departments are required to inspect massage businesses applying for permits and provide resultant written findings to the Director.

Existing law generally prohibits certain massage businesses from locking exterior doors while the business is open.

Existing law also provides an enforcement structure that includes issuance of administrative penalties and fines for violations of Article 29.

Amendments to Existing Law

The Proposed Legislation would remove from the Health Code an inoperative local application process for new massage practitioner permits because the Department no longer accepted such applications as of January 1, 2019.

The Proposed Legislation would allow people who are documented CAMTC-certified practitioners to be exempt from the requirement of providing fingerprints to the Director for criminal background checks related to their application for a massage establishment, sole practitioner massage establishment, or outcall massage service permit.

The Proposed Legislation would remove the requirement that the Director report new massage establishment or sole practitioner massage establishment permit applications to certain City departments (Building Inspection, Police, and Fire) and would remove the requirement that City departments inspect these establishments. Under the Proposed Legislation, the Director will still be required to report these new applications to the Planning Department, but not in the case of massage establishments that are continuing operation under a change of ownership.

The Proposed Legislation would allow massage establishments to install keyless lock systems with access codes on exterior doors upon prior approval by the Director. Under the Proposed Legislation, establishments using these pre-approved systems may remain locked while open for business if the establishment provides the Department of Public Health (Department) with a valid access code or other method of unlocking the system.

Under the Proposed Legislation, it would be a violation of the Health Code if the Department is unable to gain entry to an establishment using a keyless lock system during the establishment's operating hours. The Proposed Legislation would also add additional penalties for repeat violations of keyless lock system requirements including removal of the keyless lock system and rescission of the Director's approval to continue using a keyless lock system.

The Proposed Legislation would amend the Health Code to include solicitation of lewd conduct and prostitution by massage practitioners as conduct subject to civil penalty, and would clarify that certain violations of Article 29 of the Health Code are considered a public health nuisance and subject to related additional enforcement, penalty, or other action.

Background Information

The Proposed Legislation seeks to increase efficiency in applying for certain massage establishment permits by exempting CAMTC-certified practitioners from redundant local fingerprinting requirements, removing some interdepartmental referral and inspection requirements that added unnecessary delay and expense to the application process, and removing all interdepartmental referral requirements in cases of change of ownership at massage establishments with preexisting approved permits. By allowing keyless locking systems under certain circumstances, the Proposed Legislation balances Departmental needs to access and inspect massage establishments with the establishments' interest in maintaining building security.

This Legislative Digest reflects amendments made at the April 27, 2023 meeting of the Public Safety and Neighborhood Services Committee to: 1) include solicitation of lewd conduct or prostitution by massage practitioners as conduct subject to civil penalties, even in the absence of a criminal citation, charge, or conviction; and 2) clarify that violations of Article 29 may also be addressed as public nuisances under Section 581 of the Health Code.

N:\LEGANA\AS2022\2300043\01673485.DOCX

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

M E M O R A N D U M

TO: Katy Tang, Director
Small Business Commission, City Hall, Room 448

FROM: John Carroll, Clerk, Public Safety and Neighborhood Services Committee
Board of Supervisors

DATE: November 18, 2022

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Public Safety and Neighborhood Services Committee

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 221160 Health Code - Massage Permit Requirements

Ordinance amending the Health Code to exempt applicants for Massage Establishment, Sole Practitioner Massage Establishment, and Outcall Massage Service permits from fingerprinting requirements if the applicant holds a valid license issued by the California Massage Therapy Council; remove certain departments (Building Inspection, Police, Fire) from the list of departments that the Department of Public Health (DPH) must notify regarding new Massage Establishment permit applications, and remove all notification requirements to departments in cases of change in ownership of Massage Establishments or Sole Practitioner Massage Establishments; remove the requirement that departments receiving notice of new Massage Establishment permit applications conduct inspections with written findings of the applying massage establishment; allow Massage Establishments to install an exterior door keyless lock system upon prior DPH approval and upon providing DPH with a valid and up-to-date access code; and remove from the Health Code the inoperative local application process for new Massage Practitioner permits.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

****

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ **No Comment**

____ **Recommendation Attached**

_____

Chairperson, Small Business Commission

c: Offices of Chair Mar and Supervisor Mandelman

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- [ ] 2. Request for next printed agenda Without Reference to Committee.
- [ ] 3. Request for hearing on a subject matter at Committee.
- [ ] 4. Request for letter beginning :"Supervisor _____ inquiries"
- [ ] 5. City Attorney Request.
- [ ] 6. Call File No. _____ from Committee.
- [ ] 7. Budget Analyst request (attached written motion).
- [ ] 8. Substitute Legislation File No. _____
- [ ] 9. Reactivate File No. _____
- [ ] 10. Topic submitted for Mayoral Appearance before the BOS on _____

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- [ ] Small Business Commission
- [ ] Youth Commission
- [ ] Ethics Commission
- [ ] Planning Commission
- [ ] Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Mandelman; Ronen

Subject:

Health Code - Massage Permit Requirements

The text is listed:

Ordinance amending the Health Code to exempt applicants for Massage Establishment, Sole Practitioner Massage Establishment, and Outcall Massage Service permits from fingerprinting requirements if the applicant holds a valid license issued by the California Massage Therapy Council; remove certain departments (Building Inspection, Police, Fire) from the list of departments that the Department of Public Health (DPH) must notify regarding new Massage Establishment permit applications, and remove all notification requirements to departments in cases of change in ownership of Massage Establishments or Sole Practitioner Massage Establishments; remove the requirement that departments receiving notice of new Massage Establishment permit applications conduct inspections with written findings of the applying massage establishment; allow Massage Establishments to install an exterior door keyless lock system upon prior DPH approval and upon providing DPH with a valid and up-to-date access code; and remove from the Health Code the inoperative local application process for new Massage Practitioner permits.

Signature of Sponsoring Supervisor: 