

1 [Health Code - Massage Practitioner and Business Permits]

2

3 **Ordinance amending the Health Code to comprehensively revise the regulation of**
4 **massage practitioners, massage establishments, massage outcall services, and sole**
5 **practitioner massage establishments by, among other things: 1) authorizing the**
6 **Director of Health (“Director”) to access local, state, and federal criminal history**
7 **information of permit applicants and permit holders; 2) eliminating temporary massage**
8 **practitioner permits; 3) clarifying the administrative process by which permit**
9 **applicants and permit holders may appeal a decision to deny, suspend, or revoke a**
10 **permit; 4) authorizing the Director to deny a massage establishment permit to an**
11 **applicant who has been convicted of any offense related to prostitution or solicitation**
12 **of prostitution; 5) adding or revising massage establishment operating standards**
13 **relating to vermin, employee areas, locked doors, residential use, and advertising; 6)**
14 **prohibiting a massage business from operating a massage school on the same**
15 **premises as a massage establishment; 7) establishing a massage establishment**
16 **reinspection fee of \$191 per hour; 8) updating administrative and permit penalties; 9)**
17 **authorizing the imposition of a lien on a property that has contributed to a violation of**
18 **Article 29 of the Health Code (“Article 29”) to collect unpaid administrative penalties,**
19 **enforcement costs, fines, interest, and attorneys’ fees; 10) authorizing the City**
20 **Attorney to institute civil proceedings for injunctive and monetary relief for violations**
21 **of Article 29; 11) declaring violations of select provisions of Article 29 to be public**
22 **nuisances; and 12) discontinuing the acceptance of applications for massage**
23 **practitioner permits effective January 1, 2019.**

24 ///

25 ///

1 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
2 **Additions to Codes** are in *single-underline italics Times New Roman font*.
3 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
4 **Board amendment additions** are in double-underlined Arial font.
5 **Board amendment deletions** are in ~~strikethrough Arial font~~.
6 **Asterisks (* * * *)** indicate the omission of unchanged Code
7 subsections or parts of tables.

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

9 Section 1. The Health Code is hereby amended by revising Sections 29.4, 29.5, 29.10,
10 29.11, 29.12, 29.17, 29.18, 29.25, 29.26, 29.27, 29.29, 29.31, 29.32, 29.33, 29.41, 29.42, and
11 29.45, deleting Sections 29.3, 29.13, 29.14, and existing Section 29.46, and adding new
12 Sections 29.6, 29.43, and 29.46, to read as follows:

13 ~~**SEC. 29.3. COMPLAINT LINE.**~~

14 ~~*The Director shall maintain a phone line for inquiries and complaints regarding massage*~~
15 ~~*businesses and practitioners*~~

16 **SEC. 29.4. TRANSFER OF PERMIT.;** **SALE OF MASSAGE BUSINESS.**

17 (a) No permit issued under this Article 29 shall be transferable under any
18 circumstances, including but not limited to the sale of the ~~m~~Massage ~~b~~Business.

19 (b) Upon the effective date of the sale of a Massage Business, the permit for the Massage
20 Business shall expire by operation of law. If a permittee sells a Massage Business, the permittee shall
21 promptly surrender the permit to the Director no later than the effective date of the sale. This
22 obligation is not dependent on the Director's requesting the surrender, but arises by operation of law
23 as a result of the sale of the Massage Business. If the permittee fails to surrender the permit to the
24 Director as required by this subsection (b), the Director may, after giving the permittee notice by mail
25

1 or electronically of the proposed action and an opportunity to respond, establish that the permit has
2 expired by operation of law and hence is not a valid permit, and that it must be surrendered.

3
4 **SEC. 29.5. DEFINITIONS.**

5 For the purposes of this Article 29:

6 "Approved School" or "Approved Massage School" means a school that provides
7 instruction and training in massage and meets the requirements of California Business and
8 Professions Code Section 4601(a).

9 "CAMTC" means the California Massage Therapy Council as established in California
10 Business and Professions Code Section 4602, or any successor agency.

11 "CAMTC Certified Practitioner" means an individual who administers massage for
12 compensation and holds a valid and active certificate to practice massage issued by CAMTC
13 pursuant to California Business and Professions Code Sections 4604 or 4604.2.

14 "City" means the City and County of San Francisco.

15 "Compensation" means a payment, loan, advance, donation, contribution, deposit,
16 forgiveness of debt, or gift of money or anything of value.

17 "Convicted" means having pled guilty or having received a verdict of guilty, including a
18 verdict following a plea of nolo contendere, to a crime.

19 "Department" means Department of Public Health.

20 "Director" means the Director of the Department of Public Health or any individual
21 designated by the Director to act on his or her behalf.

22 "Inspector" means a Department employee responsible for conducting inspections on behalf of
23 the Department.

1 "Massage" means any method of pressure on or friction against, or stroking, kneading,
2 rubbing, tapping, pounding, vibrating, or stimulating the external soft pads of the body with the
3 hands or with the aid of any apparatus or appliance.

4 "Massage Business" means Massage Establishment, Out-call Massage Service, and
5 Sole Practitioner Massage Establishment, collectively.

6 "Massage Establishment" means a fixed place of business where more than one
7 individual administers Massage for Compensation, excluding those locations where Massage
8 is provided only on an outcall basis.

9 "Massage Practitioner" means any individual who administers Massage for
10 Compensation pursuant to a permit issued by the Director under this Article 29.

11 ~~Notwithstanding the previous sentence, "Massage Practitioner" does not include CAMTC Certified~~
12 ~~Practitioner.~~

13 "Outcall Massage Service" means any business other than a Massage Establishment
14 or Sole Practitioner Massage Establishment that provides Massage for Compensation at a
15 location designated by the client rather than on its premises.

16 "Owner" means any individual, partnership, firm, association, corporation, or
17 combination of individuals of whatever form or character with an ownership interest in a
18 business that provides Massage services.

19 "Sole Practitioner" means a Massage Practitioner permit holder or CAMTC Certified
20 Practitioner who provides Massage for Compensation without any partners, associates, or
21 employees, and absent any business relationship with a Massage Establishment.

22 "Sole Practitioner Massage Establishment" means a fixed place of business solely
23 owned by a Massage Practitioner permit holder or CAMTC Certified Practitioner, which
24 individual is the only person who provides Massage for Compensation. The business location
25

1 may be shared by up to two ~~to four~~ Massage Practitioners or CAMTC Certified Practitioners in
2 any combination, except as otherwise provided pursuant to Section 29.29(e).

3
4 **SEC. 29.6. ACCESS TO SUMMARY CRIMINAL HISTORY INFORMATION.**

5 The Director is authorized to access local, state, and federal level summary criminal history
6 information for licensing, permitting, and/or certification of Massage Businesses and Massage
7 Practitioners, and for the suspension or revocation of licenses, permits, and/or certification of Massage
8 Businesses and Massage Practitioners, and may not disseminate the information to a private entity.

9
10 **SEC. 29.10. PERMIT REQUIRED FOR MASSAGE PRACTITIONER; EXEMPTIONS.**

11 (a) **Permit Required.** It shall be unlawful for any individual to administer Massage for
12 Compensation without first obtaining a Massage Practitioner permit from the Director, unless
13 that individual is exempt from the permit requirement under subsection (b).

14 (b) **Exemptions.** The following massage service providers are exempt from the permit
15 requirement in subsection (a):

16 (1) CAMTC Certified Practitioners. A CAMTC Certified Practitioner shall be
17 ineligible for a Massage Practitioner Permit so long as he or she holds a CAMTC certification.

18 (2) Physicians, surgeons, chiropractors, osteopaths, nurses, or any physical
19 therapists, who are duly licensed to practice their respective professions in the State of
20 California and persons working directly under the supervision of or at the direction of such
21 licensed persons, working at the same location as the licensed person, and administering
22 massage services subject to review or oversight by the licensed person.

23 (3) Barbers and cosmetologists who are duly licensed under the laws of the
24 State of California, while engaging in practices within the scope of their licenses, and limited
25 to the massaging of the neck, face, scalp, hands, or feet of the clients.

1 (4) Employees of hospitals, nursing homes, mental health facilities, or any
2 other health facilities duly licensed by the State of California, while acting within the scope of
3 their employment.

4 (c) Notwithstanding any provision in this Article 29, starting January 1, 2019, a person may
5 not file and the Department may not accept an application for a Massage Practitioner Permit.

6 (1) The Department shall process and may grant in accordance with this Article 29 any
7 applications for Massage Practitioner Permits filed before January 1, 2019, even if some or all of the
8 processing occurs on or after January 1, 2019.

9 (2) This subsection (c) shall not affect the status of Massage Practitioner Permits issued
10 before January 1, 2019, or those issued under subsection (c)(1) on or after January 1, 2019.

11
12 **SEC. 29.11. APPLICATION FOR MASSAGE PRACTITIONER PERMIT.**

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

- 14 (1) File an application with the Director upon a form provided by the Director;
15 (2) Provide a complete set of fingerprints in the manner required by the
16 Director for the purpose of undergoing a criminal background check; and
17 (3) Pay a non-refundable application fee as set forth in Section 29.40.

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

- 20 (1) The applicant's ~~name~~ name and residence address;
21 (2) A unique identifying number from at least one government-issued form of
22 identification, such as a social security card, a state driver's license or identification card, or a
23 passport;
24 (3) Written evidence that the applicant is at least 18 years of age;
25 (4) The applicant's height, weight, and color of hair and eyes;

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

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

7 (7) All felony or misdemeanor convictions; and

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

9 (c) **Minimum Educational Requirements.** An applicant for a Massage Practitioner
10 permit shall provide, in a form acceptable to the Director, documentation showing that the
11 applicant has completed not less than 500 hours of instruction in Massage and related
12 subjects at an Approved Massage School.

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

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

22 23 **SEC. 29.12. ISSUANCE OF MASSAGE PRACTITIONER PERMIT.**

24 (a) **Time for Decision.** Within ~~60~~90 business days following receipt of a completed
25 application for a Massage Practitioner permit, the Director shall either issue the permit or mail

1 a written statement of his or her reasons for denial thereof to the applicant. If the Director
2 takes neither action, the permit shall be deemed issued.

3 ~~(b) *Hearing on Application.* The Director may, in his or her discretion, hold a hearing on any~~
4 ~~pending application for a Massage Practitioner permit. The Director shall give the applicant at least~~
5 ~~10 days' written notice of the time and place of the hearing.~~

6 ~~(eb)~~ **Grounds for Denial.** No Massage Practitioner permit shall be issued if the
7 Director finds:

8 (1) The applicant is exempt from the permit requirement pursuant to Section
9 29.10; or

10 (2) The applicant has provided materially false information, documents, or
11 testimony in support of the application or in any other matter before the Director; or

12 (3) Within five years immediately prior to the date of application, the applicant
13 has had any license, certificate, or permit related to the practice of Massage revoked or, if
14 from another jurisdiction, suspended under circumstances that qualify for revocation under
15 this Article 29, or is currently the subject of an unresolved disciplinary process that may result
16 in suspension or revocation; or

17 (4) The applicant has been Convicted of any of the following offenses:

18 (A) Any felony involving the use of coercion, force, or violence upon
19 another person; or

20 (B) Any misdemeanor sexual battery; or

21 (C) Any offense involving sexual misconduct with children, prostitution, or
22 solicitation of an act of prostitution; or

23 (D) Any offense requiring registration pursuant to Section 290 of the
24 California Penal Code or, for Convictions outside California, any offense requiring registration
25 in California under Penal Code Section 290.005; or

1 (5) The applicant has failed to satisfy the education requirements or pass the
2 Massage proficiency test; or

3 (6) The Director concludes that there is good cause to deny the permit in
4 accordance with Section 26 of Article 1 of the Business and Tax Regulations Code; or

5 (7) The applicant has not fully complied with the provisions of this Article 29; or

6 (8) The applicant has not demonstrated eligibility for a permit under this Article 29.

7 **(~~c~~) Discretionary Exception for Criminal Convictions.** The Director may issue a
8 Massage Practitioner permit to any individual Convicted of one of the offenses listed in
9 subsection (~~e~~b)(4) of this Section if the Director finds that the offense was not violent, the
10 conviction occurred at least five years prior to the date of application, and the applicant has
11 not been Convicted subsequently of a listed offense.

12 **(~~e~~d) Right to Director's Hearing.** If an application for a Massage Practitioner permit
13 is denied, ~~and provided that the Director did not hold a hearing on the application as provided in~~
14 ~~subsection (b) of this Section 29.12,~~ the applicant may appeal the denial within ~~3015~~ days of
15 ~~receipt of the date listed on~~ the notice of denial by notifying the Director in writing and explaining
16 in detail the ground or grounds for the appeal. The Director shall conduct a hearing to
17 consider the appeal within ~~360~~ days of receiving the notice of appeal and shall notify the
18 applicant of the time and place of the hearing at least 10 days in advance of the hearing. The
19 Director shall oversee the hearing, provide the applicant an opportunity to speak at the
20 hearing, and issue a ruling within ~~360~~ days of the conclusion of the hearing. The Director's
21 ruling shall be the final decision of the Department. If the Director does not rule within ~~360~~
22 days of the conclusion of the hearing, the permit denial shall be deemed sustained.

23
24 **~~SEC. 29.13. TEMPORARY MASSAGE PRACTITIONER PERMIT.~~**
25

1 ~~A practitioner of Massage who holds a valid permit, license, or certificate to practice Massage~~
2 ~~issued by another jurisdiction and who has been practicing Massage in that jurisdiction may request a~~
3 ~~temporary Massage Practitioner permit upon completion and submission of an application for a~~
4 ~~Massage Practitioner permit, and payment of all fees for the permit. If requested, the Director shall~~
5 ~~issue the temporary Massage Practitioner permit, which shall be valid for the period during which the~~
6 ~~application is under review, but in no event for more than 60 business days. The Director may revoke~~
7 ~~the temporary permit at any time if he or she finds that the applicant has failed to meet any of the~~
8 ~~requirements of Section 29.12 or violated any provision of this Article 29 or any rules or regulations~~
9 ~~promulgated by the Director related to the practice of Massage.~~

10
11 ~~**SEC. 29.14. EDUCATIONAL MATERIALS.**~~

12 ~~The Director shall provide all persons receiving a Massage Practitioner permit with culturally~~
13 ~~and linguistically appropriate educational materials regarding the City and County of San Francisco~~
14 ~~Sanctuary policy, employee rights, and information on a variety of resources, including linkages to~~
15 ~~health services, victim assistance services, and emergency numbers and hotlines to call for information~~
16 ~~and assistance.~~

17
18 **SEC. 29.17. MESSAGE PRACTITIONER CONDUCT REQUIREMENTS.**

19 (a) **Required Attire.** Massage Practitioners shall remain fully clothed while
20 administering massage or otherwise present in a part of the Massage Establishment to which the
21 public has access (e.g., massage rooms, reception areas, publicly accessible restrooms)~~visible to clients~~
22 ~~on business premises~~, including premises designated by the client through an Outcall Massage
23 Service. The Massage Practitioner's attire shall not include: (1) attire that is transparent, see-
24 through, or that substantially exposes the Practitioner's undergarments; (2) swim attire, unless
25

1 the Practitioner is providing a water-based massage modality that has been approved by
2 CAMTC; or (3) attire that exposes the individual's breasts, buttocks, or genitals.

3 (b) **Lewd Conduct Prohibited.** Massage Practitioners shall not engage in lewd
4 conduct on business premises, including locations designated by the client through an Outcall
5 Massage Service. Lewd acts include, but are not limited to: the performance of acts or
6 simulated acts of sexual intercourse, masturbation, ~~sodomy~~, bestiality, copulation (oral, anal or
7 vaginal), or flagellation; the actual or simulated caressing or fondling by one adult human
8 being of the anus or genitals of another adult human being; the actual or simulated displaying
9 of the pubic hair, anus, vagina, penis, vulva, buttocks, areola, or any other external genitalia of
10 the human body.

11
12 **SEC. 29.18. SUSPENSION OR REVOCATION OF MESSAGE PRACTITIONER**
13 **PERMIT.**

14 (a) **Grounds for Suspension or Revocation.** The Director may revoke or suspend
15 any Massage Practitioner permit ~~after a hearing~~ if the Director finds:

16 (1) Facts sufficient to support denial of a Massage Practitioner permit on any
17 ground set forth in Section 29.12; or

18 (2) The Massage Practitioner has violated the conduct requirements in Section
19 29.17; or

20 (3) The Director finds that there is good cause to suspend or revoke the permit
21 in accordance with Sections 24 or 26 of Article 1 of the Business and Tax Regulations Code; or

22 (4) The Massage Practitioner has violated any of the provisions of this Article
23 29 or a rule or regulation adopted by the Director related to the practice of Massage; or

24 (5) The Massage Practitioner has not paid the Massage Practitioner Fee as required by
25 Section 29.40 of this Article 11, and 30 days have elapsed since notice of delinquency.

1 ~~(b) Hearing. A Massage Practitioner who has been cited by the Department for a violation of~~
2 ~~any provision of this Article 29 shall be scheduled to appear at hearing before the Director. The~~
3 ~~Director shall provide the Massage Practitioner at least 10 days' written notice of the time, place, and~~
4 ~~grounds for the hearing. If requested by the Massage Practitioner, the Director shall make available all~~
5 ~~documentary evidence against him or her within five days of the request. If the Director does not~~
6 ~~provide the requested documentary evidence within five days, the Massage Practitioner may request,~~
7 ~~and the Director shall grant, a continuance of the hearing date. At the hearing, the Massage~~
8 ~~Practitioner shall be provided an opportunity to refute all evidence against him or her. The Director~~
9 ~~shall oversee the hearing and issue a ruling within 30 days of the conclusion of the hearing. If the~~
10 ~~Director fails to issue a ruling within this time period, the permit shall not be suspended or revoked.~~
11 ~~The Director's ruling shall be the final decision of the Department.~~

12 ~~(c) Summary Suspension. The Director may suspend summarily any Massage Practitioner~~
13 ~~permit issued under this Article 29 pending a noticed suspension or revocation hearing when, in the~~
14 ~~opinion of the Director, the public health or safety requires such summary suspension. The Director~~
15 ~~shall provide written notice of such summary suspension to the Massage Practitioner by hand delivery~~
16 ~~or registered mail.~~

17 (b) The Director may not suspend or revoke a Massage Practitioner permit under this Article
18 29 until the Director has issued a Notice of Violation and provided the Massage Practitioner an
19 opportunity to be heard and respond as provided in Section 29.43 of this Article 29.

20 (c) Notwithstanding subsection (b) of this Section 29.18, the Director may suspend summarily
21 any Massage Practitioner permit issued under this Article 29 when, in the judgment of the Director, an
22 extreme public health hazard requires such summary suspension. The Director shall provide written
23 notice of such summary suspension to the permit holder by hand delivery, registered mail, or electronic
24 mail. No more than three days after written notice of such summary suspension is given, the Director
25 shall issue a Notice of Violation identifying the alleged acts or failures to act that constitute the basis

1 for the summary suspension, and provide the Massage Practitioner an opportunity to be heard and
2 respond as provided in Section 29.43 as to why the summary suspension should end. However, the time
3 for hearing and decision shall be accelerated as follows: Upon a timely request for a hearing, the
4 Director shall set any requested hearing within seven days, unless time is extended by mutual
5 agreement of the affected parties; and the Director, or a designated hearing officer who shall have the
6 same authority as the Director to hear and decide the case, and make any orders consistent with this
7 Article 29, shall issue a decision on the summary suspension within three days after hearing.

8 (d) If the Permittee appeals a decision by the Director or hearing officer upholding a summary
9 suspension to the Board of Appeals, the summary suspension shall remain in effect until a final decision
10 is issued by the Board of Appeals. Where a permit is revoked after a summary suspension, the
11 revocation shall be effective immediately and, if the Permittee appeals to the Board of Appeals, shall
12 remain in effect until a final decision is issued by the Board of Appeals.

14 **SEC. 29.25. MASSAGE BUSINESS PERMIT REQUIRED; EXEMPTIONS.**

15 (a) **Permit Required.** It shall be unlawful for any Owner of a Massage Establishment,
16 Sole Practitioner Massage Establishment, or Outcall Massage Service to operate that
17 Massage Business at any location in the City without first obtaining a permit for such Massage
18 Business from the Director. In the event that a business owner or operator disclaims that the
19 business is a Massage Business, the Director may hold a hearing to determine whether a
20 permit under this Section 29.25 is required.

21 (b) **Exemptions.** The following businesses may provide Massage services without
22 obtaining a Massage Business permit:

23 (1) Businesses providing Massage services performed solely by physicians,
24 surgeons, chiropractors, osteopaths, nurses, or any physical therapists, who are duly licensed
25 to practice their respective professions in the State of California and persons working directly

1 under the supervision of or at the direction of such licensed persons, working at the same
2 location as the licensed person, and administering massage services subject to review or
3 oversight by the licensed person.

4 (2) Businesses providing Massage services performed solely by barbers or
5 cosmetologists who are duly licensed under the laws of the State of California, while engaging
6 in practices within the scope of their licenses, and limited to the massaging of the neck, face,
7 scalp, hands, or feet of the clients.

8 (3) Hospitals, nursing homes, mental health facilities, or any other health
9 facilities duly licensed by the State of California, providing Massage services performed solely
10 by their employees acting within the scope of their employment.

11 ~~(c) Previously Exempt Massage Businesses. A Massage Business previously exempt from the~~
12 ~~Massage Business permit requirement under prior Section 29.9 but not currently exempt under~~
13 ~~subsection (b) of this Section 29.25 may continue to operate without a permit until its application for a~~
14 ~~permit is submitted and decided; provided that the Owner submits a completed application within 90~~
15 ~~days of the effective date of the ordinance deleting former Section 29.9;* and further provided that the~~
16 ~~Massage Business complies with all provisions of this Article 29 and any rules and regulations that~~
17 ~~apply to Massage Businesses during the interim period in which it operates without a permit. The~~
18 ~~Director may conduct a public hearing on the application, as provided in Section 29.29(b). The~~
19 ~~Director may deny the application for a Massage Business permit on any ground enumerated in~~
20 ~~Sections 29.29 and 29.33, grant the permit, or grant the permit with conditions.~~

21
22 **SEC. 29.26. APPLICATION FOR MASSAGE ESTABLISHMENT, SOLE**
23 **PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE**
24 **PERMIT.**
25

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

- 3 (1) File an application with the Director upon a form provided by the Director;
4 (2) Provide a complete set of fingerprints in the manner required by the
5 Director from any person with an ownership interest in the Massage Business for the purpose
6 of ~~a~~undergoing a criminal background check; ~~and~~
7 (3) Pay a non-refundable application fee, as set forth in Section 29.41; and
8 (4) Permit inspection of any Massage facilities proposed to be operated under
9 the permit by all relevant City departments, including but not limited to the Department of Building
10 Inspection, the Planning Department, and the Fire Department.

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

- 13 (1) The name(s), address(es), and any other identifying information regarding
14 the Owner(s) as requested by the Director;
15 (2) A description of all services to be rendered by the Massage Business;
16 (3) The address of any facilities proposed to be operated under a Massage
17 Establishment or Sole Practitioner Massage Establishment permit, and a copy of the rental
18 agreement or lease showing the names of the landlord and all of the tenants or lessees who
19 are parties to the rental agreement; or, if the Owner owns the premises, a copy of the deed
20 and a disclosure of any other person or entity with a shared ownership interest in the
21 premises;
22 (4) The number of individuals to be employed by the Massage Business, and,
23 except in the case of a Sole Practitioner Massage Establishment, the names and permit or
24 certificate numbers of any Massage Practitioners or CAMTC Certified Practitioners who shall
25 operate under that permit;

1 (5) All permits, certificates, or licenses related to the practice of Massage or the
2 operation of a Massage Establishment or Massage service, currently or formerly held by an
3 Owner, issued in San Francisco or elsewhere, including any discipline imposed by the issuing
4 authority and a statement whether the permit holder is currently the subject of a disciplinary
5 process; ~~and~~

6 (6) All felony or misdemeanor convictions for each person with an ownership
7 interest in the Massage Business; ~~and~~

8 (7) A floor plan of the proposed Massage Establishment, indicating the location of all
9 Massage treatment rooms, Massage tables, Massage chairs, and employee areas;

10 (8) A certificate of insurance against liability for workers compensation or proof of
11 self-insurance in accordance with the provisions of the California Labor Code; and

12 (~~7~~) Any additional information as required by the Director.

13 (c) **Organizational Owners.** If the Owner of the Massage Establishment or Outcall
14 Massage Service is or includes a corporation, the name of the corporation shall be set forth
15 exactly as shown in its articles of incorporation together with the names and residence
16 addresses of each of the officers, directors, and each stockholder holding more than 10%
17 ~~percent~~ of the stock of the corporation. If the Owner is or includes a partnership, the
18 application shall set forth the name and the residence address of each of the partners,
19 including limited partners. If one or more of the partners is a corporation, the provisions of this
20 ~~subsection~~ 29.26(c) pertaining to corporate applicants applies. The applicant shall provide
21 the information required in subsections (a)(2), (b)(1), (b)(5), and (b)(6) of this Section 29.26 for
22 each officer, director, and stockholder holding more than 1-0% ~~percent~~ of the stock of the
23 corporation, or for each partner, including limited partners.

24 (d) **Proof of Massage Practitioner Permit or CAMTC Certification for Sole**
25 **Practitioners.** In addition to the information required under subsection (b) of this Section

1 29.26, an applicant for a Sole Practitioner Massage Establishment permit shall provide proof
2 that he or she holds either a current, valid Massage Practitioner permit or a CAMTC certificate.
3 A Massage Practitioner may not hold both a Massage Practitioner permit and a CAMTC certificate.

4 (e) **Massage Establishment Compliance with Planning Code Notice**

5 **Requirement.** An Applicant for a Massage Establishment permit shall also submit proof of
6 compliance with any applicable Planning Code requirements regarding notice and posting of
7 the proposed Massage Establishment.

8 (f) **Deadline for submission of supporting documentation.** After reviewing a Massage
9 Business permit application, the Director shall notify the applicant in writing that the application is
10 complete and accepted for further review, or incomplete. If the Director deems the application to be
11 incomplete, the applicant shall supply the information or documentation that is required for the
12 application to be deemed complete. The applicant shall have 60 days from the date that the Director
13 provides notification that the application is incomplete to provide all required information and/or
14 documentation. If the applicant does not provide such information within 60 days, the application will
15 be deemed abandoned and will not receive further consideration.

16
17 **SEC. 29.27. REQUIREMENTS FOR MASSAGE FACILITIES.**

18 All proposed massage facilities must comply with the following requirements, and with
19 any rules and regulations adopted by the Director pursuant to Section 29.2:

20 (a) **Toilet Rooms and Other Rooms.** Toilet rooms shall be provided for clients in
21 convenient locations.

22 (1) Construction of rooms used for toilets, laundry, and mop sinks, as well as
23 rooms used for tubs, wet tables, steam baths, saunas, and showers stalls, shall be made of
24 waterproof, ~~with hard~~ nonabsorbent materials that are easily cleaned and shall be installed in
25 accordance with the San Francisco Building Code.

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

3 (3) Urinals may be substituted for toilets after one toilet has been provided.

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

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

8 (1) Handwashing facilities must provide liquid hand soap in a pump or a wall-
9 mounted dispenser and sanitary wall mounted disposable paper towels.

10 (2) Handwashing facilities shall be readily accessible to massage practitioners.

11 (c) **Light and Ventilation.** All portions of the Establishment shall be provided with
12 adequate light by means of windows, skylights, or with an approved artificial light. Adequate
13 ventilation shall be provided by means of windows or a mechanical operating ventilating
14 system.

15 (1) Toilet, dressing, and massage rooms shall be provided with at least 108 lux
16 (10 foot candles) of light.

17 (2) All electrical equipment shall be installed in accordance with the
18 requirements of the San Francisco Electrical Code.

19
20 **SEC. 29.29. ISSUANCE OF MASSAGE ESTABLISHMENT, SOLE PRACTITIONER**
21 **MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE PERMIT.**

22 (a) Within ~~60~~90 business days following receipt of a completed application for a
23 Massage Business permit, or, for applications subject to referral under Section 29.28, within
24 30 days of receiving all written findings, whichever is later, the Director shall either issue the
25

1 permit or mail a written statement of his or her reasons for denial thereof to the applicant. If
2 the Director takes neither action, the permit shall be deemed issued.

3 ~~(b) Hearing on Application. The Director may, in his or her discretion, hold a hearing on any~~
4 ~~pending application for a Massage Establishment, Sole Practitioner Massage Establishment, or Outcall~~
5 ~~Massage Service permit. The Director shall give the applicant at least 10 days' written notice of the~~
6 ~~time and place of the hearing.~~

7 (eb) No Massage Establishment, Sole Practitioner Massage Establishment, or Outcall
8 Massage Service permit shall be issued if the Director finds:

9 (1) The applicant has provided materially false information, documents, or
10 testimony in support of the application or in any other matter before the Director; or

11 (2) The facilities as proposed by the applicant would not comply with all
12 applicable laws including, but not limited to, the facilities requirements set forth in Section
13 29.27, the City Building, Planning, Housing, and Fire Codes, or any rule or regulation related
14 to Massage facilities adopted by the Director pursuant to this Article 29; or

15 (3) Within one year prior to the application, the applicant has had any license or
16 permit of any kind suspended or revoked by the Director; or

17 (4) ~~Within five years immediately p~~Prior to the date of application, the applicant
18 has had any license, certificate, or permit related to the practice of Massage or operation of a
19 Massage Establishment or Massage service revoked; or

20 (5) The applicant has been Convicted of any of the following offenses:

21 (A) Any ~~felony~~offense involving the use of coercion, force, or violence
22 upon another person; or

23 (B) Any misdemeanor sexual battery; or

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

25 (D) Any offense involving Ppimping or pandering; or

1 (E) Any offense related to human trafficking; or

2 (F) Any offense requiring registration pursuant to Section 290 of the
3 California Penal Code or, for offenses committed outside California, any offense requiring
4 registration in California pursuant to Penal Code Section 290.005; or

5 (G) Any offense related to prostitution or solicitation of prostitution; or

6 (6) The Director revoked permission to operate a Massage Business at the
7 same location within the prior ~~12~~36 months; or

8 (7) The Director concludes there is good cause to deny the permit in
9 accordance with Section 26 of Article I of the Business and Tax Regulations Code ~~Section 26~~; or

10 (8) The Director finds that the premises or the Massage Business will be or is
11 being managed, conducted, or maintained in such a manner as to endanger the health and
12 safety of the employees or clients, or to coerce any employee to engage in illegal conduct.; or

13 (9) The applicant has not fully complied with the provisions of this Article 29; or

14 (19) The applicant has not demonstrated eligibility for a permit under this Article 29.

15 ~~(d)~~ **Discretionary Exception for Criminal Convictions.** The Director may issue a
16 permit otherwise authorized under this Section to any Owner Convicted of one of the offenses
17 listed in subsection ~~(e)~~(b)(5) of this Section 29.29 if the Director finds that the offense was not
18 violent, the conviction occurred at least five years prior to the date of application, and the
19 applicant has not been convicted subsequently of any of the listed offenses.

20 ~~(e) Sole Practitioner Massage Establishments. Notwithstanding the provisions of Section 29.5,~~
21 ~~the Director may issue a Sole Practitioner Massage Establishment permit authorizing more than four~~
22 ~~Massage Practitioners or CAMTC Certified Practitioners to operate out of the same location if the~~
23 ~~Director finds good cause exists and the operation of the Sole Practitioner Massage Establishment will~~
24 ~~not have a negative impact on the neighborhood.~~

25

1 (*fd*) **Right to Director's Hearing.** If an application for a Massage Establishment, Sole
2 Practitioner Massage Establishment, or an Outcall Massage Service permit is denied, *and*
3 *provided that the Director did not hold a hearing on the application as provided in subsection (b) of*
4 *this Section,* the applicant may appeal the denial within ~~30~~15 days of ~~receipt of the date listed on~~
5 the notice of denial by notifying the Director in writing and explaining the ground or grounds
6 for the appeal. Within ~~30~~60 days of receipt of the notice of appeal, the Director shall conduct a
7 hearing to consider the appeal. At least 10 days prior to the hearing, the Director shall notify
8 the applicant of the time and place of the hearing. The Director shall oversee the hearing,
9 provide the applicant an opportunity to speak at the hearing, and issue a ruling within ~~30~~60
10 days of the conclusion of the hearing. If the Director fails to rule within this time period, the
11 permit denial shall be deemed sustained. The Director's ruling shall be the final decision of the
12 Department.

13
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 (a) **Cleanliness and Hygiene.** Massage facilities, including all appliances and
19 apparatuses, shall be kept clean and operated in a sanitary condition.

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

22 (2) Clean sheets and towels shall be provided, laundered after each use, and
23 stored in a sanitary manner.

24 (3) No towels or sheets shall be laundered or dried on the premises in the
25 absence of suitable laundry facilities.

1 (4) Smooth, cleanable, and appropriately labeled receptacles for the storage of
2 soiled linens and towels shall be provided.

3 (5) Soiled refuse shall be appropriately bagged and disposed of.

4 (6) Wet and dry heat rooms, shower compartments, and toilet rooms shall be
5 thoroughly cleaned each business day.

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

7 (8) The facility shall be free of vermin, including but not limited to cockroaches, mice,
8 rats, and other pests that carry disease.

9 (b) **Changing Area.** A room, enclosure, or designated area shall be provided where
10 clients can change and store their clothes.

11 (c) **Employee Area.** A room, enclosure, or designated area that is separate from the
12 toilet, massage room(s), steam room, or other common areas shared by the clients shall be
13 made available to employees at all times. The employee area(s) shall be furnished with individual
14 lockers and adequate storage space for employees' personal belongings. Members of the public may
15 not have access to the employee area.

16 (d) **Employment of Minors Prohibited.** It shall be unlawful to employ any individual
17 who is not at least 18 years of age.

18 (e) **Register of Practitioners.** Every Massage Establishment or Outcall Massage
19 Service that hires or contracts with individuals to provide Massage services shall ensure at all
20 times that each such individual holds a valid and current Massage Practitioner permit or
21 CAMTC certificate. The Massage Establishment or Outcall Massage Service shall maintain a
22 register of practitioners that includes each practitioner's permit or CAMTC certificate number,
23 which shall be available for inspection by the Department at all times.

24 (f) **Practitioner Conduct.** Massage Establishments shall be responsible for the
25 conduct of all individuals providing Massage for Compensation on their business premises

1 and shall ensure that such individuals do not wear improper attire or engage in lewd conduct
2 as set forth in Section 29.17.

3 (g) ~~Doors to Remain Unlocked~~**Locks.** ~~Massage Establishment interior~~Doors that permit entry
4 into any treatment room may not be equipped with locks or any device designed to prevent, impede, or
5 delay entry into a room. Massage Establishment~~and~~ exterior doors may be equipped with locks, but
6 shall remain unlocked while the Massage Establishment is open. Exterior doors may remain
7 locked while the Massage Establishment is open only if the Massage Establishment is owned by one
8 individual with no more than one employee or independent contractor.~~there is no more than one~~
9 employee or independent contractor on the premises of the Establishment, exclusive of the
10 Establishment owner.

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

18 (i) **Human Trafficking Information Notices.** Massage Establishments must comply
19 with the requirements of California Civil Code Section 52.6. The required notices of human
20 trafficking information and telephone hotline numbers shall be posted in English, Spanish,
21 Cantonese, Vietnamese, and other appropriate languages as determined by the Department.

22 (j) **Residential Use.** Massage facility premises shall not be used as a sleeping room
23 or for any other residential purpose. A Massage Establishment shall be presumed to be used for
24 residential purposes if any of the following items are maintained on the premises:

25 (1) Beds or mattresses, other than professional Massage tables;

1 (2) Bedding, such as pillows, blankets, and sheets, other than those used for
2 professional Massage tables;

3 (3) Sleepwear, including but not limited to, pajamas, nightgowns, and lingerie;

4 (4) Groceries that require cooking, such as raw meats, poultry, fish, and grains; or

5 (5) Clothing that exceeds one change of clothing for each employee or independent
6 contractor who is present on the premises.

7 (k) **Establishment Permit to be Displayed.** Every permit to operate a Massage
8 Establishment or Sole Practitioner Massage Establishment shall be displayed in a
9 conspicuous place within the Establishment such that the permit may be readily seen by
10 individuals entering the premises.

11 (l) **Outcall Massage Service Permit Subject to Inspection.** Every permit to operate
12 an Outcall Massage Service must be made available for inspection by the Department at all
13 times while providing Massage services.

14 (m) **Hours of Operation.** No Massage Business shall operate or provide Massage
15 services, and no customer or person not employed or contracted by the Massage Business may be on
16 the premises of a Massage Establishment, during the hours between 10:00 p.m. and 7:00 a.m.

17 (n) **Advertising.** No Massage Business shall publish or distribute, or cause to be published or
18 distributed, including on the internet, any advertising for services that would violate this Article 29.

19 (o) **Operation of Massage School Prohibited.** No Massage Business shall operate a Massage
20 school or otherwise provide instruction in Massage on the premises of a Massage Establishment.

21
22 **SEC. 29.32. INSPECTION.**

23 Any member of the Department may inspect any Massage Establishment or Sole
24 Practitioner Massage Establishment to determine whether the Establishment is operating in
25 compliance with the provisions of State law or this Article 29, or for the purpose of providing

1 educational materials to employees of the Establishment in culturally and linguistically
2 appropriate languages regarding the City and County of San Francisco Sanctuary City policy,
3 employee rights, and information on a variety of resources, including linkage to health care
4 services, victim services, and emergency numbers and hotlines to call for information and
5 assistance. *The Director shall adopt regulations governing the use of double doors or other structural*
6 *devices that interfere with reasonable inspections and do not have legitimate safety or security*
7 *purposes.* Nothing in this Section shall be construed to limit or restrict the lawful authority of a
8 police officer or other City employee to enter premises licensed under this Article 29.

9
10 **SEC. 29.33. SUSPENSION OR REVOCATION OF MESSAGE ESTABLISHMENT,**
11 **SOLE PRACTITIONER MESSAGE ESTABLISHMENT, OR OUTCALL MESSAGE**
12 **SERVICE PERMIT.**

13 (a) **Grounds for Suspension or Revocation.** The Director may revoke or suspend
14 any Massage Establishment, Sole Practitioner Massage Establishment, or Outcall Massage
15 Service permit, after a hearing, if the Director finds:

16 (1) Facts sufficient to support the denial of such permit on any ground set forth
17 in Section 29.29; or

18 (2) The permittee or the permittee's agent, employee, or independent contractor has
19 refused to permit a lawful inspection of its business premises or its operations, or has interfered
20 with City staff in the performance of an inspection such as by threatening them, touching them, or
21 intentionally delaying their entry to the premises of the Massage Business; or

22 (3) The permittee or the permittee's agent, employee, or independent contractor has
23 engaged in any conduct in connection with the operation of the business that violates the
24 operating requirements set forth in ~~Section 29.31~~ this Article 29, any rules or regulations related

1 to Massage Business operations, or any State or local laws relating to the practice of Massage or
2 the operation of a Massage Business; or

3 ~~(4) Any employee or independent contractor of the permittee has engaged in conduct~~
4 ~~that violates any state or local laws at permittee's place of business, and the permittee had or, in the~~
5 ~~exercise of due diligence, should have had knowledge of the prohibited conduct; or~~

6 (5) The Director determines that such Massage Business is being managed,
7 conducted, or maintained without regard for public health or the health of clients or
8 employees, or without due regard for proper sanitation and hygiene; or

9 (6) The Director finds good cause to suspend or revoke the permit in
10 accordance with Sections 24 or 26 of Article 1 of the Business and Tax Regulations Code
11 Sections 24 and 26.

12 ~~(b) Hearing. A permit holder cited for a violation of any provision of Article 29 or the rules~~
13 ~~and regulations promulgated by the Director under Section 29.2 shall be scheduled to appear at a~~
14 ~~hearing held by the Director. The Director shall provide the permittee at least 10 days' written notice~~
15 ~~of the time, place, and grounds for the hearing. If requested by permittee, the Director shall make~~
16 ~~available all documentary evidence against permittee within five days of the request. If the Director~~
17 ~~does not provide the requested documentary evidence within five days, the permit holder may request,~~
18 ~~and the Director shall grant, a continuance of the hearing date. At the hearing, the permittee shall be~~
19 ~~provided an opportunity to refute all evidence against him or her. The Director shall oversee the~~
20 ~~hearing and issue a ruling within 30 days of the conclusion of the hearing. If the Director fails to issue~~
21 ~~a ruling in this time period, no suspension or revocation shall be imposed. The Director's ruling shall~~
22 ~~be the final decision of the Department.~~

23 ~~(c) Summary Suspension. The Director may suspend summarily any Massage Establishment,~~
24 ~~Sole Practitioner Massage Establishment, or Outcall Massage Service permit issued under this Article~~
25 ~~pending a noticed revocation or suspension hearing when, in the opinion of the Director, the public~~

1 ~~health or safety requires such summary suspension. The Director shall provide written notice of such~~
2 ~~summary suspension to the permit holder by hand delivery or registered mail.~~

3 (b) The Director may not suspend or revoke a Massage Business permit under this Article 29
4 until the Director has issued a Notice of Violation and provided the Massage Business and the owner of
5 the property upon which the Massage Business is located an opportunity to be heard and respond as
6 provided in Section 29.43 of this Article 29.

7 (c) Notwithstanding subsection (b) of this section 29.33, the Director may suspend summarily
8 any Massage Business permit issued under this Article 29 when, in the judgment of the Director, an
9 extreme public health hazard requires such summary suspension. The Director shall provide written
10 notice of such summary suspension to the permit holder by hand delivery, registered mail, or electronic
11 mail. No more than three days after written notice of such summary suspension is given, the Director
12 shall issue a Notice of Violation identifying the alleged acts or failures to act that constitute the basis
13 for the summary suspension, and provide the Massage Business an opportunity to be heard and
14 respond as provided in Section 29.43 as to why the summary suspension should end. However, the time
15 for hearing and decision shall be accelerated as follows: Upon a timely request for a hearing, the
16 Director shall set any requested hearing within seven days, unless time is extended by mutual
17 agreement of the affected parties; and the Director, or a designated hearing officer who shall have the
18 same authority as the Director to hear and decide the case, and make any orders consistent with this
19 Article 29, shall issue a decision on the summary suspension within three days after hearing.

20 (d) If the Permittee appeals a decision by the Director or hearing officer upholding a summary
21 suspension to the Board of Appeals, the summary suspension shall remain in effect until a final decision
22 is issued by the Board of Appeals. Where a permit is revoked after a summary suspension, the
23 revocation shall be effective immediately and, if the Permittee appeals to the Board of Appeals, shall
24 remain in effect until a final decision is issued by the Board of Appeals.

1 **SEC. 29.41. MASSAGE ESTABLISHMENT, SOLE PRACTITIONER MASSAGE**
2 **ESTABLISHMENT, AND OUTCALL MASSAGE SERVICE FEES-; REINSPECTION FEES.**

3 (a) **Massage Establishments.** The application fee for a Massage Establishment
4 permit shall be \$681. The annual license fee for a Massage Establishment shall be \$1,214.
5 The fee shall be due annually on March 31 of each year, pursuant to Section 76.1, Article 2 of
6 the Business and Tax Regulations Code.

7 (b) **Sole Practitioner Massage Establishments.** The application fee for a Sole
8 Practitioner Massage Establishment permit shall be \$497. The annual license fee for a Sole
9 Practitioner Massage Establishment shall be \$599. The fee shall be due annually on March 31
10 of each year, pursuant to Section 76.1, Article 2 of the Business and Tax Regulations Code.

11 (c) **Outcall Massage Services.** The application fee for an Outcall Massage Service
12 permit shall be \$351. The annual license fee for an Outcall Massage Service shall be \$306.
13 The fee shall be due annually on March 31 of each year, pursuant to Section 76.1, Article 2 of
14 the Business and Tax Regulations Code.

15 (d) **Exception.** A Massage Practitioner or CAMTC Certified Practitioner holding a
16 Sole Practitioner Massage Establishment permit shall not be required to pay any additional
17 application or annual license fee for an Outcall Massage Service permit.

18 (e) **Reinspection fees.** *If an inspection discloses a violation of any provision of this Code or of*
19 *any State law for which the Department is responsible for enforcement, the Department shall determine*
20 *a period of time that is reasonable to correct the violation and shall thereafter reinspect the property to*
21 *verify such correction. The term "reinspection" shall refer to any inspection by the Department to verify*
22 *whether an owner has corrected a violation. The Massage Business shall pay a fee in the amount of*
23 *\$191 for the first hour or any fraction thereof for each reinspection by an Inspector, to compensate the*
24 *Department for its costs in performing the reinspection. Reinspections that require more than one hour*
25 *to complete shall be subject to an additional fee at the rate of \$96 for each half-hour or part thereof*

1 beyond the first 60 minutes. If more than one reinspection is necessary to secure correction of a
2 violation, the Massage Business shall pay a fee in the amount set forth herein for each reinspection. In
3 the event that the Massage Business fails to pay any reinspection fee due under this Section within 30
4 days of the due date, the Massage Business must pay a late payment penalty of \$40 and the City may
5 collect the reinspection fee through the placement of a lien in the amount of the fee and any late
6 payment penalty owed or delinquent, plus interest of 1.5% per month, against the real property
7 pursuant to the procedures set forth in Chapter 10, Article XX of the Administrative Code (beginning
8 with Section 10.230).

9
10 **SEC. 29.42. ADJUSTMENT OF FEES.**

11 Beginning with fiscal year 2008-2009, fees set forth in this Article 29 may be adjusted
12 each year without further action by the Board of Supervisors. Not later than April 1, the
13 Director shall report to the Controller the revenues generated by the fees for the prior fiscal
14 year and the prior fiscal year's costs of operation, as well as any other information that the
15 Controller determines appropriate to the performance of the duties set forth in this Section
16 29.42. Not later than May 15, the Controller shall determine whether the current fees have
17 produced or are projected to produce revenues sufficient to support the costs of providing the
18 services for which the fees are assessed and that the fees will not produce revenue which is
19 significantly more than the costs of providing the services for which the fees are assessed.
20 The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal
21 year as appropriate to ensure that the program recovers the costs of operation without
22 producing revenue which is significantly more than such costs. The adjusted rates shall
23 become operative on July 1, and shall be published on the Department's website.

24
25 **SEC. 29.43. NOTICE OF VIOLATION; HEARING AND APPEAL.**

1 (a) If the Director determines that a Massage Practitioner or Massage Business is operating in
2 violation of this Article 29 (which is deemed in the entirety of this Section 29.43 to include a violation
3 of a permit condition and/or a violation of the rules and regulations adopted pursuant to this Article),
4 the Director may issue a Notice of Violation to the Massage Practitioner, the Massage Business, the
5 owner of real property where the violation occurred, and/or any other Persons the Director deems
6 responsible for causing the violation. The issuance of the Notice of Violation may be by hand delivery,
7 registered mail, or electronic mail.

8 (b) The Notice of Violation shall include the following information:

9 (1) That the Director has made a determination that the Massage Practitioner or
10 Massage Business has operated in violation of this Article 29;

11 (2) The alleged acts or failures to act that constitute the basis for the Director's
12 determination;

13 (3) That the Director intends to take enforcement action against the Massage
14 Practitioner, Massage Business, owner of real property, and/or any other Person deemed responsible
15 for causing the violation(s), and the nature of that action, including the administrative penalty and
16 enforcement costs to be imposed, and/or the suspension or revocation of the Massage Practitioner
17 and/or Massage Establishment permit(s);

18 (4) That the Massage Practitioner, Massage Business, owner of real property, and/or
19 any other Person deemed responsible for causing the violation(s) has the right to request a hearing
20 before the Director within 15 days after the Notice of Violation is issued, which request must be made
21 in writing.

22 (c) If no request for a hearing is filed with the Director within the appropriate period, the right
23 to request a hearing shall be deemed waived, and the Director's determination shall become final and
24 effective 15 days after the Notice of Violation was mailed. The Director shall issue an order imposing
25 the enforcement action, and shall send the order to the Persons served with the Notice of Violation by

1 hand delivery, registered mail, or electronic mail. In subsequent civil proceedings, such violations
2 shall be deemed not to have been corrected. Where no hearing is timely requested, an order suspending
3 or revoking a permit is final. The failure of the Person on whom the Notice of Violation is served to
4 request a hearing shall constitute a failure to exhaust administrative remedies and shall preclude the
5 Person from obtaining judicial review of the validity of the enforcement action.

6 (d) Upon a timely request for a hearing, the Director shall, within 15 days of the request,
7 notify the requester of the date, time, and place of the hearing. Such notification may be made by hand
8 delivery, registered mail, or electronic mail. The Director shall make available to the requester the
9 photographs and other recorded evidence obtained in support of the Notice of Violation as well as a
10 copy of the report prepared by the Director's designee, if any, to support the Notice of Violation. Such
11 hearing shall be held no later than 60 days after the Director receives the request, unless time is
12 extended by mutual agreement of the requester and the Director.

13 (e) The Director shall conduct the hearing, or a hearing officer may be designated, who shall
14 have the same authority as the Director to hear and decide the case and make any orders consistent
15 with this Article 29. The Massage Practitioner, Massage Business, owner of real property, or other
16 Person(s) deemed responsible for causing the violation(s) may present evidence for consideration,
17 subject to any rules adopted by the Director or hearing officer for the orderly conduct of the hearing.
18 Within 60 days of the conclusion of the hearing, the Director or hearing officer shall render a decision
19 in the form of a written order, which the Director shall promptly serve on the Massage Practitioner,
20 Massage Business, owner of real property, or any other Persons charged in the Notice of Violation.
21 Service of the written order may be made by hand delivery, registered mail, or electronic mail. The
22 order shall state whether the Notice of Violation has been upheld (in whole or in part), and the
23 enforcement action taken against each party.

24 (f) If the order directs the Massage Practitioner, Massage Business, owner of real property, or
25 other person to pay an administrative penalty and/or enforcement costs, such amount shall be paid

1 within fifteen days from the mailing of the order; the order shall inform the recipient of such deadline
2 for payment.

3 (g) If the order suspends or revokes a permit, the permittee must cease operations within 24
4 hours of the suspension or revocation order being final.

5 (h) If the order suspends or revokes a permit, or imposes additional permit conditions, it may
6 be appealed to the Board of Appeals in the manner prescribed in Article 1 of the Business and Tax
7 Regulations Code; the order shall inform the recipient of such right to appeal.

8
9 **SEC. 29.45. ADMINISTRATIVE PENALTIES.**

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

16 (1) **Massage Business Operating Without a Massage Business Permit.**

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

19 (B) Permit penalty: Business location and Owner of Massage Business
20 ineligible for a Massage Business permit for 180 days.

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

22 (2) **Massage Business Employing Any Person Under 18 Years of Age.**

23 (A) Administrative fine: None.

24 (B) Permit penalty: Mandatory ~~60-120 day suspension~~ revocation of
25 Massage Business permit.

1 ~~(C) Repeat violations: Revocation for second occurrence within 36 months of~~
2 ~~first occurrence;~~ Massage Business permittee ineligible for a subsequent permit for 180 days.

3 **(3) Solicitation Citations, Charges, or Convictions, as Defined by California**
4 **Penal Code Section 647(a) or (b) and/or San Francisco Police Code Section 225, for**
5 **Anyone Working at Massage Establishment.**

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

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

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

12 **(4) Trafficking Charges or Convictions, as Defined by California Penal**
13 **Code Section 236.1, for Anyone Working at Massage Establishment.**

14 (A) Administrative fine: None.

15 (B) Permit penalty: Revocation; permittee ineligible for a subsequent
16 Massage Establishment permit at any location.

17 (C) Repeat violations: Same penalty as (a)(4)(B).

18 **(5) Massage Establishment or Outcall Massage Service Knowingly**
19 **Employing Individual Without Massage Practitioner Permit or CAMTC Certification To**
20 **Administer Massage.**

21 (A) Administrative fine: \$1,000 to be paid by Massage Business permittee.

22 (B) Permit penalty: None.

23 (C) Repeat violations: 15-30 day suspension of Massage Business permit
24 and up to \$2,500 fine for second occurrence ~~within a 24 month period~~; 30-60 day suspension or
25

1 revocation of Massage Business permit, and up to \$5,000 fine for third occurrence ~~within 24~~
2 ~~months~~.

3 (6) **Massage Facilities Used for Residential Sleeping Purposes.**

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

5 (B) Permit penalty: None.

6 (C) Repeat violations: 15-30 day suspension of Massage Business permit
7 and up to \$2,500 fine for second occurrence ~~within 24 months~~; 30-60 day suspension of
8 Massage Business permit and up to \$5,000 fine for third occurrence ~~within 24 months~~.

9 (7) **Presence of Beds Instead of or in Addition to Massage Tables.**

10 (A) Administrative fine: ~~None~~ \$500.

11 (B) Permit penalty: None.

12 (C) Repeat violations: Up to \$1,000 fine for second occurrence ~~within 24~~
13 ~~months~~; 15-30 day suspension and up to \$2,500 fine ~~and~~ for third occurrence ~~within 24 months~~.

14 (8) **Any Massage Service Provider Improperly Attired in Violation of**
15 **Section 29.17(a).**

16 (A) Administrative fine: Up to ~~\$250~~ \$500 per person found to be improperly
17 attired, to be paid by Massage Business permittee.

18 (B) Permit penalty: ~~None~~ 60 day suspension of Massage Business permit for
19 each person found to be improperly attired.

20 (C) Repeat violations: Up to \$1,500 fine per person to be paid by
21 Massage Business permittee for second and each subsequent occurrence; 180 ~~60~~-day
22 suspension of Massage Practitioner permit and ~~60-day suspension per person~~ revocation of
23 Massage Business permit.

24 (9) **Sanitation Violations Pursuant to Section 29.321(a).**

25 (A) Administrative fine: None.

1 (B) Permit penalty: None.

2 (C) Repeat violations: Up to \$250 fine and 60-day suspension of
3 Massage Business permit.

4 (10) **Massage Business Operating Between the Hours of 10:00 p.m. and**
5 **7:00 a.m.**

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

7 (B) Permit penalty: ~~None~~ 15-30 day suspension of Massage Business Permit.

8 (C) Repeat violations: ~~15-30~~ 30-60 day suspension and up to \$2,500 for
9 second occurrence ~~within 24 months~~; ~~30-60~~ 60-90 day suspension and up to \$5,000 fine for third
10 and each subsequent occurrence ~~within 24 months~~.

11 (11) **Practicing Massage for Compensation Without a Massage**
12 **Practitioner Permit or CAMTC Certification.**

13 (A) Administrative fine: ~~\$250~~ \$500 fine.

14 (B) Repeat violations: ~~\$500~~ \$1,000 fine for second occurrence ~~within 24~~
15 ~~months~~; ~~\$1,000~~ \$1,500 fine for third and each subsequent occurrence ~~within 24 months~~ and
16 individual ineligible for Massage Practitioner permit for 180 days.

17 (12) **Anyone Engaged In Lewd Conduct or Performing Sex Acts as**
18 **Defined in Section 29.17(b) on Massage Business Premises.**

19 (A) Administrative fine: ~~\$1,000~~ \$2,500 to be paid by Massage Business
20 permittee, and

21 (B) Permit penalty: ~~60-day suspension~~ Revocation of Massage Practitioner
22 permit and revocation of Massage Business permit.

23 ~~(C) Repeat violations: Revocation of Massage Practitioner permit and Massage~~
24 ~~Business permit.~~ Permit holder ~~permanently~~ ineligible for subsequent Massage Practitioner or
25 Massage Business Permit for a period of five years from the date of permit revocation.

1 (13) **Failure to Post Notices as Required by Section 29.32I(i).**

2 (A) Administrative fine: Written warning for first violation, \$250 for
3 second and each subsequent violation within 12 months.

4 (B) Permit Penalty: 30-day suspension of Massage Business permit for
5 third and subsequent violations ~~within 24 months~~.

6 **(14) Failure to Present Valid Massage Practitioner Card to an Inspector or Law**
7 **Enforcement Officer upon Request, as Required by Section 29.15.**

8 (A) Administrative fine: \$250 to be paid by Massage Practitioner.

9 **(15) Publishing Advertising in Violation of Section 29.31(n).**

10 (A) Administrative fine: \$1,000 fine.

11 (B) Permit Penalty: 30 day suspension of Massage Business permit for second
12 and subsequent violations.

13 **(16) Interfering with City Staff in Their Performance of an Inspection, as Prohibited**
14 **by Section 29.33(a)(2).**

15 (A) Administrative fine: \$1,000 fine to be paid by Massage Business permittee.

16 (B) Repeat violations: \$2,500 fine and 30 day suspension of Massage Business
17 permit for second occurrence; revocation of Massage Business permit for third occurrence.

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

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

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

22 (C) Repeat violations: 30-60 day suspension and up to \$2,500 for second
23 occurrence; 60-90 day suspension and up to \$5,000 fine for third and each subsequent occurrence.

24 **(148) All Other Violations of San Francisco Health Code Article 29 and**
25 **Any Massage Program Rules and Regulations.**

- 1 (A) Administrative fine: Up to \$1,000 fine.
- 2 (B) Permit penalty: Possible suspension or revocation.
- 3 (C) Repeat violations: Up to \$2,500 fine for the second violation ~~in a 24-~~
4 ~~month period~~ and possible permit suspension or revocation; up to \$5,000 for the third and
5 subsequent violations ~~in a 24-month period~~, and permit suspension or revocation.

6 **(19) Option to Require Massage Practitioner Participation in Public Health and**
7 **Safety Program.** *As an alternative to any of the administrative penalties and permit penalties that the*
8 *Department may impose on a Massage Practitioner, as authorized by this Section 29.45, the Director*
9 *may require that a Massage Practitioner participate in a Department program that addresses such*
10 *topics as health education, employee and labor rights, and workplace injury and illness prevention.*

11 (b) **Notice to Property Owner.** ~~Written notice of each Massage Business permit holder,~~
12 ~~violation shall be provided to the owner(s) of the property upon which the Massage Business is~~
13 ~~located.~~ Written notice of each Notice of Violation that proposes to suspend or revoke a Massage
14 Business permit shall be served on the owner(s) of the property upon which the Massage Business is
15 located, at the same time and in the same manner as required by Section 29.43 of this Article 29.

16 (c) **Payment and Collection of Administrative Penalty and Enforcement Costs.** Any
17 administrative penalty and/or enforcement costs assessed under this Article 29 is a debt to the City and
18 County of San Francisco and shall be paid to the Treasurer of the City and County of San Francisco.
19 Any amount paid late shall be subject to an additional late fine of 10% on the unpaid amount. The sum
20 of the unpaid amount and the 10% late fine shall accrue interest at the rate of 1% per month (or
21 fraction thereof) until fully paid; any partial payments made shall first be applied to accrued interest.
22 The City may file a civil action or pursue any other legal remedy to collect such unpaid amount, fine,
23 and interest. In any civil action for collection, the City shall be entitled to obtain a judgment for the
24 unpaid amounts, fine, and interest, and for the costs and attorneys' fees incurred by the City in
25 bringing such civil action.

1 (d) Lien for Administrative Penalty. Where an activity or condition on San Francisco real
2 property has caused, contributed to, or been a substantial factor in causing the violation, the Director
3 may initiate proceedings to make any unpaid administrative penalty, enforcement costs, fine, and
4 interest, and all additional authorized costs and attorneys' fees, a lien on the property. Such liens shall
5 be imposed in accordance with Administrative Code Sections 10.230–10.237, or any successor
6 provisions. Before initiating lien proceedings, the Director shall send a request for payment under
7 Administrative Code Section 10.230A.

8 (ee) **Revenue from Fines.** Administrative fines collected under this Section 29.45 shall
9 be used to support the Department of Public Health and its Health Code enforcement
10 functions.

11 (df) **No Bar to Prosecution.** Nothing in this Section 29.45 shall preclude the
12 prosecution of anyone under Health Code Section 29.47, the laws of the State of California, or
13 the laws of the United States of America.

14
15 **SEC. 29.46. COST RECOVERY.**

16 ~~Any person who is assessed an administrative fine or whose permit is suspended or revoked~~
17 ~~under this Article, regardless of whether any fine, suspension, or revocation is held in abeyance by the~~
18 ~~Department, shall be liable to the City for its costs incurred in enforcing this Article, including but not~~
19 ~~limited to the costs of inspection, investigation, administration, administrative proceedings, court~~
20 ~~proceedings, monitoring, and attorneys' fees if, at the conclusion of all proceedings, the fee or permit~~
21 ~~action is substantially sustained. Within 30 days of the final decision, the Department shall calculate its~~
22 ~~costs. The Director may reduce the bill of costs for good cause.~~

23
24 **SEC. 29.46. ENFORCEMENT BY CITY ATTORNEY.**

1 (a) The City Attorney may at any time institute civil proceedings for injunctive and monetary
2 relief including civil penalties, against any Person for violations of this Article 29, without regard to
3 whether the Director has issued a notice of violation, instituted abatement proceedings, scheduled or
4 held a hearing on a notice of violation, or issued a final decision.

5 (b) At any time, the Director may refer a case to the City Attorney's Office for civil
6 enforcement, but a referral is not required for the City Attorney to bring a civil action under subsection
7 (a).

8 (c) Action for Injunction and Civil Penalty. Any Person that violates any provision of this
9 Article 29 shall be enjoined and shall be subject to a civil penalty in an amount not to exceed \$1,000
10 for each day such violation is committed or permitted to continue, which penalty shall be assessed and
11 recovered in a civil action brought in the name of the people of the City and County of San Francisco
12 by the City Attorney in any court of competent jurisdiction. In assessing the amount of the civil penalty,
13 the court shall consider any one or more of the relevant circumstances presented by any of the parties
14 to the case, including but not limited to, the following: the nature and seriousness of the misconduct
15 giving rise to the violation, the number of violations, the persistence of the misconduct, the length of
16 time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the
17 defendant's assets, liabilities, and net worth.

18 (d) Attorneys' fees. The prevailing party in any court case or special proceeding to enforce
19 this Article 29 shall recover reasonable attorneys' fees if the City Attorney elects, at the initiation of the
20 action, to seek recovery of attorneys' fees and provides notice of such intention to the adverse party or
21 parties. In no court case or special proceeding shall an award of attorneys' fees to a prevailing party
22 exceed the amount of reasonable attorneys' fees incurred by the City.

23 (e) Remedies under this Section 29.46 are non-exclusive and cumulative to all other remedies
24 available at law or equity.

1 Section 2. The Health Code is hereby amended by revising Section 581, to read as
2 follows:

3
4 **581. PROHIBITED PUBLIC HEALTH NUISANCES.**

5 (a) No Person shall have upon any premises or real property owned, occupied or
6 controlled by him, or her, or it any public nuisance.

7 (b) The following conditions are hereby declared to be a public nuisance:

8 * * * *

9 (15) Any violations of Sections 29.10, 29.17, 29.25, 29.27. or 29.31 of this Code

10 (15~~6~~) Any violations of rules or regulations the Director adopts to implement the
11 provisions of this Article or applicable provisions of State law.

12 (16~~7~~) Anything else that the Director deems to be a threat to public health and
13 safety.

14
15 Section 3. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor’s veto of the ordinance.

19
20 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

23 ///

24 ///

25 ///

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

4

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

7 By: _____
8 ANNE PEARSON
9 Deputy City Attorney

10 n:\legana\as2018\1800316\01290088.docx

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25