

LEGISLATIVE DIGEST

[Health Code - Massage Practitioner and Business Permits]

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

Existing Law

Article 29 of the Health Code provides a comprehensive permitting and regulatory framework for massage practitioners and massage businesses over which the San Francisco Department of Public Health (“DPH”) has jurisdiction.

A massage practitioner requires a permit issued by DPH in order to provide massage services unless the practitioner holds a certificate to practice issued by the California Massage Therapy Council (“CAMTC”). A massage business must hold a permit from DPH in order to operate.

Applicants for massage practitioner permits must pass criminal background checks and demonstrate compliance with instructional requirements. Applicants for massage business permits must also pass criminal background checks and supply substantial information about their proposed business. Massage businesses are subject to numerous operating

requirements designed to protect the health and safety of massage business employees and customers.

Violations of Article 29 may subject massage practitioners and massage businesses to administrative fines and suspension or revocation of their permit, following notice of the violation and an opportunity to be heard at an administrative hearing.

Amendments to Current Law

The proposed ordinance would change the current regulatory scheme by:

- Authorizing the Director of DPH to access summary criminal history information to facilitate the approval, denial, suspension, and/or revocation of massage permits;
- Imposing a deadline of December 31, 2018 for the submission of an application for a massage practitioner permit;
- Authorizing the Director of DPH to deny massage permits on the basis of convictions for prostitution or solicitation of prostitution;
- Clarifying the process by which a permit applicant or permit holder may appeal administrative and permit penalties;
- Requiring applicants for massage business permits to submit to DPH a floor plan of the proposed business and proof of workers compensation coverage;
- Updating and/or establishing massage business operating standards to: require that the facility is free of vermin; establish a presumption that a massage business is being used as a residence, in violation of Article 29, if items such as sleepwear, groceries, and bedding are present; prohibit a massage business from advertising services that would violate Article 29; and prohibit a massage business from operating a massage school on the same premises;
- Increasing administrative fines and permit penalties for select violations of Article 29;
- Requiring that notices of violation relating to massage businesses be sent to the owner of the real property in which the business is located, and providing the real property owner with an opportunity to participate in the administrative appeals process;
- Authorizing the City Attorney to institute civil proceedings for injunctive and monetary relief for violations of Article 29;
- Providing that violations of select provisions of Article 29 constitute prohibited public health nuisances, subject to fines and penalties set forth in Article 11 of the Health Code.

Background Information

One of the purposes of Article 29 is to ensure that massage establishments do not become outlets of the sex trade and engage in human trafficking and other human rights violations. Enforcement of Article 29 by DPH and the City Attorney's Office has helped to increase compliance with standards that promote the health and safety of massage establishments'

employees and customers, but violations continue to occur, including violations of the provisions of Article 29 that prohibit lewd acts. The proposed ordinance includes amendments that are intended to eliminate enforcement loopholes, and discourage conduct that puts worker and client safety at risk.

In addition, since 2015 when Article 29 was last amended, CAMTC has become the primary licensing agency for massage practitioners. In 2017, DPH processed only four applications for massage practitioner permits. To avoid a duplication of efforts, the proposed ordinance would establish December 31, 2018 as the last date that DPH will accept massage practitioner permit applications. After that date, individuals wishing to work as massage practitioners will be required to seek certification from CAMTC. Those practitioners who are currently permitted by DPH will retain their DPH permits, and be subject to DPH regulation.

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