

FILE NO. 090403

ORDINANCE NO.

1 [Penalties for violation of Massage Practitioner Licensing and Regulation Ordinance.]

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3 **Ordinance amending Health Code Sections 1918 and 1928 to change the hours of**
4 **permitted operation for massage establishments and to revise the penalties for**
5 **violating Health Code Sections 1900 et seq., adding Health Code Section 1928.1 to**
6 **provide for payment of the costs of administrative and other proceedings, and adding**
7 **Health Code Section 1928.2 to provide for criminal penalties.**

8 NOTE: Additions are *single-underline italics Times New Roman*;
9 deletions are *strike-through italics Times New Roman*.
10 Board amendment additions are double-underlined;
11 Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. The San Francisco Health Code is hereby amended by amending Sections
14 1918 and 1928 to read as follows:

15 **SEC. 1918. DISPLAY OF PERMIT; HOURS OF OPERATION.**

16 (a) Every permit to operate a massage establishment or solo practitioner massage
17 establishment shall be displayed in a conspicuous place within the establishment so that the
18 permit may be readily seen by individuals entering the premises. Every permit to operate an
19 outcall massage service must be made available for inspection by the Department of Public
20 Health at all times while providing massage services.

21 (b) No massage establishment, solo practitioner massage establishment, or outcall
22 massage service shall operate or provide massage services during the hours between 10
p.m. midnight and 7:00 a.m.

23 **SEC. 1928. VIOLATIONS AND ADMINISTRATIVE PENALTIES.**

24 (a) Any person who violates any provision of this Article or any rule or regulation
25 adopted pursuant to Section 1926 may, after being provided notice and an opportunity to be

1 heard, be subject to an administrative fine not to exceed \$1,000 for the first violation of any
2 provision of this Article or any a rule or regulation in a 2412-month period, \$2,500 for the second
3 violation of any provision of this Article or any the same rule or regulation in a 2412-month period,
4 and \$5,000 for the third and subsequent violations of any provision of this Article or any the same
5 rule or regulation in a 2412-month period; provided, however, that the schedule of
6 administrative fines for a massage practitioner shall be as follows: not to exceed \$250 for the
7 first violation of any provision of this Article or a rule or regulation in a 2412-month period, \$500
8 for the second violation of any provision of this Article or any the same rule or regulation in a
9 2412-month period, and \$1,000 for the third and subsequent violations of any provision of this
10 Article or any the same rule or regulation in a 2412-month period.

11 (b) Any permittee who knowingly employs a massage practitioner who is not in
12 possession of a valid permit or who allows such a massage practitioner to perform, operate,
13 or practice in the permittee's place of business may, after being provided notice and an
14 opportunity to be heard, be subject to an administrative fine not to exceed \$1,000 for the first
15 violation in a 2412-month period, \$2,500 for the second violation in a 2412-month period, and
16 \$5,000 for the third and subsequent violations in a 2412-month period.

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

22 (de) Administrative fines collected under this Section shall be used to support the
23 Department of Public Health and its Health Code enforcement functions.
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25

1 (e~~f~~) Nothing in this Section shall preclude the prosecution of anyone under Health
2 Code Section 1928.2, the laws of the State of California or the laws of the United States of America.

3 Section 2. The San Francisco Health Code is hereby amended by adding Section
4 1928.1 to read as follows:

5 **SEC. 1928.1. COST RECOVERY.**

6 Any person who is assessed an administrative fine or whose permit is suspended or revoked
7 under this Article, regardless of whether any fine, suspension or revocation is held in abeyance, shall
8 be liable to the City for its costs incurred in enforcing this Article including but not limited to the costs
9 of inspection, investigation, administration, hearing officer, administrative proceedings, court
10 proceedings, monitoring and attorneys' fees. Within ten business days of the termination of the
11 administrative hearing or other proceeding, the Department of Public Health shall calculate the
12 amount of costs.

13 Section 3. The San Francisco Health Code is hereby amended by adding Section
14 1928.2 to read as follows:

15 **SEC. 1928.2. VIOLATIONS AND CRIMINAL PENALTIES.**

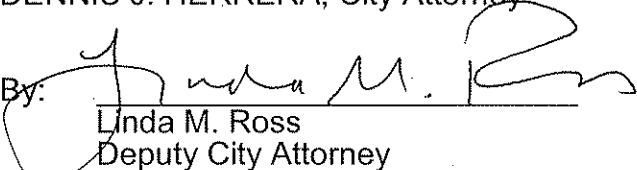
16 (a) Any person, permittee, as defined in Section 1900(i), of a massage establishment or
17 outcall massage service or any employer of a massage practitioner who shall violate Health
18 Code Section 1901 which requires a permit to engage in the practice of massage, Health Code Section
19 1905 which requires presentation of an identification card to any City health inspector, Health Code
20 Section 1908 which requires a permit to operate a massage establishment, solo practitioner massage
21 establishment, or outcall massage service, Health Code Section 1914(e) which prohibits the use of any
22 room in which massage services are provided to be used as a sleeping room, Health Code Section 1915
23 which requires every permit holder or employer to ensure that a massage practitioner has obtained a
24 permit, Health Code Section 1916 which requires a register of practitioners to be available for
25 inspection, Health Code Section 1917 which prohibits the employment of any individual under the age

1 of 18, Health Code Section 1918, which requires display of a permit and prohibits operation between
2 the hours of 10 p.m. and 7 a.m., or any rule or regulation adopted pursuant to Section 1926, shall be
3 guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000 and or
4 by imprisonment in the County Jail not to exceed six months, or by both. A person convicted of
5 violating this Section shall be deemed guilty of a separate offense for every day such violation shall
6 continue.

7 (b) Nothing in this Section shall preclude the prosecution of anyone under the laws of the
8 State of California or of the United States of America.

9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By:


12 Linda M. Ross
13 Deputy City Attorney

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Mayor Newsom, Supervisor Chu
BOARD OF SUPERVISORS



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 090403

Date Passed:

Ordinance amending Health Code Sections 1918 and 1928 to change the hours of permitted operation for massage establishments and to revise the penalties for violating Health Code Sections 1900 et seq., adding Health Code Section 1928.1 to provide for payment of the costs of administrative and other proceedings, and adding Health Code Section 1928.2 to provide for criminal penalties.

June 16, 2009 Board of Supervisors — PASSED ON FIRST READING

Ayes: 9 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Dufty, Mar, Maxwell,
Mirkarimi

Absent: 1 - Daly

Excused: 1 - Elsbernd

June 23, 2009 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Dufty, Elsbernd, Mar,
Maxwell, Mirkarimi

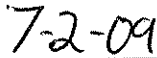
Noes: 1 - Daly

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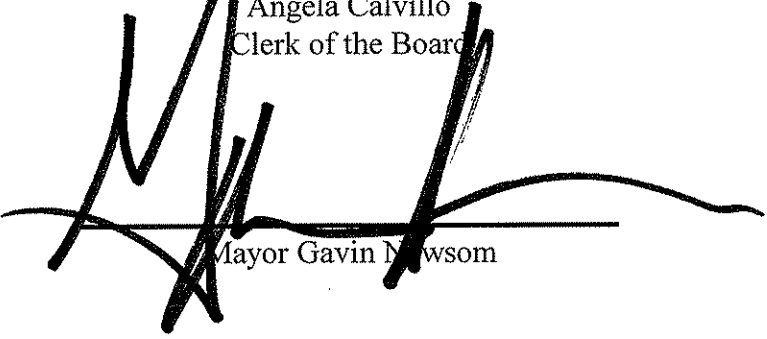
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on June 23, 2009 by
the Board of Supervisors of the City and
County of San Francisco.



Angela Calvillo
Clerk of the Board



Date Approved


Mayor Gavin Newsom