



MEMORANDUM

TO: HONORABLE BOARD OF SUPERVISORS
FROM: PAULA VLAMINGS, Legislative Analyst
DATE: March 10, 2000
RE: **Comparative Analysis of Massage Ordinances**

SUMMARY OF REQUESTED ACTION

The Honorable Board of Supervisors has requested that the Office of Legislative Analyst compare file number 991965 and file number 991109, to delineate the technical and substantive differences between the two ordinances.

EXECUTIVE SUMMARY

Currently in San Francisco, the permitting process for massage therapists and massage establishments is done through the Police Department, with no distinction between the different types of massage professionals. The Department of Public Health, upon receipt of a referral from the Police Department, conducts an inspection with regard to the establishment and makes a recommendation. The required number of training hours is 70 for a massage therapist permit, and the fees include one time fees and annual fees. The Police permit filing fees (one time) are \$195 for massage therapist, \$362 for out-call services, which require a massage therapist permit, for a total of \$557, and \$1,323 for massage establishments. The City license fees (paid annually) are \$57 for a massage therapist, \$298 for out call massage service, and \$351 for a massage establishment. There are approximately 85 massage establishments in San Francisco.

File number 991965, sponsored by Supervisor Yaki and File number 991109, sponsored by Supervisor Ammiano, transfer responsibility for the regulation and enforcement of City code regarding massage establishments and massage services from the Police Department to the Department of Public Health. In accordance with this transfer of responsibility, the Ordinances moves the regulations from the Police Code to the Health Code, with the Police Department maintaining some enforcement responsibility.

ANALYSIS

Similarities-

There are several similarities between the two proposed ordinances which also remained unchanged from the Police Code. They are in the area of fees for massage establishments permits and massage practitioners, treatment of outcall massage services, the facilities necessary for massage establishments, and the operating requirements for massage establishments. One area where the two proposed ordinances differ from the Police, but are similar to each other, is in the application for the massage establishment permit and the massage practitioner permit. Both the Ammiano Proposed Ordinance and the Yaki proposed Ordinance require the applicant to provide any information required by the Director of Public Health, including, but not limited to, information related to the health, hygiene and sanitation of the premises (§1806). Another area where the two proposed ordinances are similar but differ from the Police Code, is in the issuance of the massage practitioner permit. Both proposed ordinances require the withholding of any permit if the applicant has not fully complied with the provisions of the Article; or if the applicant has provided materially false documents or testimony.

Differences -

The primary substantive differences between the two proposed ordinances are as follows:

Permits Generally - File number 991165, sponsored by Supervisor Yaki (Yaki Proposed Ordinance), proposes a two-tiered system with two types of permits for massage practitioners, and also provides for a solo practitioner massage establishment permit. The permits for massage practitioners are a general massage practitioner permit and a therapeutic massage permit. The general massage permit is distinguishable from the therapeutic massage permit in that the latter requires additional hours of education and/or experience, employment history, and membership in a state or national professional organization. Under the Yaki Proposed Ordinance, both types of practitioner permits require the successful completion of a written or oral examination (The Police Department, as of February 1999, also requires successful completion of a written exam). The solo practitioner permit requires a valid therapeutic massage permit. File number 991109, sponsored by Supervisor Ammiano, (Ammiano Proposed Ordinance) maintains one permit, with no changes from the Police Code with regard to education or employment history. The Ammiano Proposed Ordinance does not require a written exam.

A final distinction between the two ordinances on the issue of permits, is that the Yaki Proposed Ordinance has language that states, "The Director of Public Health shall, within 14 days following a hearing, or if no hearing is held, within 60 business days, issue a practitioner permit, or mail a written statement of his or her reasons for denial to the applicant." The Ammiano Proposed Ordinance does not have the language that the Director shall mail a written statement of reasons for denial to the applicant.

Criminal Convictions - The Yaki Proposed Ordinance requires background information on any felony or misdemeanor convictions in the application for a massage establishment permit or for a massage practitioners permit. Additionally, this legislation requires refusal of a massage establishment or general massage practitioner permit if the applicant has been convicted of a violent felony, a misdemeanor sexual battery, a crime involving sexual misconduct with children, or a prostitution-related crime (§§1812, 1813, 1814 and 1815). It provides for revocation or suspension if the massage practitioner permit holder (either general or therapeutic) has been convicted of a prostitution-related crime.

The application process for the Ammiano Proposed Ordinance requires background information on any felony convictions or misdemeanor sexual battery convictions. It also requires refusal of a massage establishment permit or massage practitioner permit if the permit holder has any felony or misdemeanor sexual battery convictions; and revocation or suspension of a massage practitioner may occur if the permit holder has any felony or misdemeanor sexual battery convictions.

Additionally, the Yaki Proposed Ordinance provides that the Director of Public Health may issue a massage establishment or practitioner permit to any person convicted of any of the crimes listed in §§1812, 1813, 1814 and 1815, if the offense was not violent, occurred at least five years prior to the date of the application, and the applicant was not subsequently convicted of one of the crimes listed in those sections. In contrast, the Ammiano Proposed Ordinance provides that the Director may issue a permit to any person convicted of a felony if the crime occurred three years prior to the date of the application, and the applicant was not subsequently convicted of a felony.

Although both ordinances move the massage regulations from the Police Code to the Health Code, any violations of other laws, would fall under the Police Department.

Inspections - Another difference in the two proposed ordinances is with regard to inspections. The Yaki Proposed Ordinance allows any member of the Police Department or the Department of Public Health to inspect any massage establishment. This provision provides for a shared responsibility on the issue of inspections, and possibly enforcement. However, the Ammiano Proposed Ordinance provides only for the Director of Public Health to inspect any massage establishment. Additionally, the Yaki Proposed Ordinance provides for revocation or suspension of the massage establishment permit if the permit holder has refused to permit any duly authorized City inspector to inspect the premises or the operations therein. The Ammiano Proposed Ordinance does not have this provision.

Massage Ordinance Comparison Chart

The remainder of substantive differences, and both ordinances' technical differences, are outlined in the attached chart and includes the original Police Code provisions. Instances where there was no change in the language between all three versions (the two proposed ordinances and the Police Code), have been omitted. The chart is divided into three sections: Massage Establishments, Massage Practitioners, and Other Provisions.

*Note: Section numbers have been renumbered and are for identification purposes for this chart only, and not reflective of ordinance section numbers; italicized text denotes primary substantive differences addressed above.

I. MESSAGE ESTABLISHMENTS

Subject Matter	Current Provisions of Police Code	File Number 991965 (Sponsor: Yaki)	File Number 991109 (Sponsor: Ammiano)
Massage establishments requiring permits	All for-profit massage establishments must apply for a permit. There are two types: permits to operate a massage establishment and permits to operate an outcall massage service. The former is a fixed place of business providing massage, the latter a business providing massage at a location chosen by the customer.	All for-profit massage establishments must apply for a permit. In addition to permits to operate a massage establishment and permits to operate an outcall massage service, there are permits to operate a “solo practitioner massage establishment,” which is a fixed place of business providing massage where the permittee is the only massage practitioner. (§§1801 and 1803)	All for profit and non-profit establishments must apply for a permit. (§1801)
Application for massage establishment permit	<p>An applicant for a permit to operate a massage establishment or an outcall massage service must provide, under penalty of perjury, the following information:</p> <p>(1) any criminal convictions except minor traffic violations;</p> <p>(2) two portrait photos at least 2² x 2²;</p> <p>(3) the business, occupation, or employment of the applicant for the three years immediately preceding the date of application;</p> <p>(4) the applicant's height, weight, color of eyes and hair;</p> <p>(5) the two previous addresses immediately prior to the present address of the applicant;</p> <p>(6) a diploma or certificate of graduation from a recognized school or other</p>	<p>An applicant for a permit to operate a massage establishment, an outcall massage service or a <i>solo (therapeutic) practitioner massage establishment</i> must provide, under penalty of perjury, the following information:</p> <p>(1) any felony or misdemeanor convictions;</p> <p>(2) any other information required by the Director of Public Health, including, but not limited to, information related to the health, hygiene and sanitation of the premises.</p> <p>In addition, applicants for a permit to operate a massage establishment or an outcall massage service must provide the number of individuals to be employed; and <i>applicants for a permit to operate a solo (therapeutic massage practitioner) massage establishment</i> must provide proof of a current and valid therapeutic massage practitioner permit issued by the Director. (§§1802 and 1804)</p>	<p>An applicant for a permit to operate a massage establishment must provide, under penalty of perjury, the following information:</p> <p>(1) any felony convictions or misdemeanor sexual battery convictions;</p> <p>(2) any other information required by the Director of Public Health, including, but not limited to, information related to the health, hygiene and sanitation of the premises. (§1802)</p> <p>(3) the number of individuals to be employed.</p>

	<p>institution of learning wherein the method, profession and work of massage is taught, provided, however, that if the applicant will have no physical contact with his customer or clients he need not possess such diploma or certificate; and</p> <p>(7) such other identification and information necessary to discover the truth of the matters herein specified as required to be set forth in the application. (§2703)</p> <p>The Chief of Police has the authority to take fingerprints and additional photographs and to verify an applicant's height and weight. (§2703)</p> <p>Certain corporate applicants are exempted from providing the information in 5, 6, 7, 9 and 10 above. (§2704)</p>		
<p>Issuance of massage establishment permit</p>	<p>The Chief of Police may issue a massage establishment permit within 14 days following a hearing unless the Chief finds:</p> <p>(1) The applicant or any other individual engaged in the operation of the establishment has been convicted <i>of a violent felony, a crime involving sexual misconduct with children, or a prostitution-related crime.</i></p>	<p>The Director of Public Health must issue a massage establishment, or solo (<i>therapeutic massage practitioner</i>) practitioner massage establishment permit within 14 days following a hearing, or within 60 business days following receipt of a completed application if no hearing is held, unless the Director finds:</p> <p>(1) The applicant or any other individual engaged in the operation of the establishment has been convicted <i>of a violent felony, a misdemeanor sexual battery, a crime involving sexual misconduct with children, or a prostitution-related crime.</i></p> <p>(2) The applicant has provided materially false documents or testimony;</p> <p>(3) Within 5 years prior to the date</p>	<p>The Director of Public Health must issue a massage establishment permit within 14 days following a hearing unless the Director finds:</p> <p>(1) The applicant has been convicted of a <i>any felony or any misdemeanor sexual battery; or</i></p> <p>(2) The applicant has provided materially false documents or testimony</p>

	The Chief may issue a permit to any person convicted of <i>any of the crimes above</i> if the crime occurred <i>five years</i> prior to the date of the application <i>and the applicant was not subsequently convicted of a felony or one of the crimes above.</i> (§2713)	of application, the applicant has had any license of permit related to the practice of massage revoked. The Director may issue a permit to any person <i>convicted of any of the crimes above if the offense was not violent</i> , occurred at least <i>five years</i> prior to the date of the application, <i>and the applicant was not subsequently convicted of one of the crimes above.</i> (§§1812 and 1813)	The Director may issue a permit to any person <i>convicted of a felony</i> if the crime <i>occurred three years</i> prior to the date of the application <i>and the applicant was not subsequently convicted of a felony.</i> (§1809)
Revocation or suspension of massage establishment permit	The Chief of Police may revoke or suspend any massage establishment permit, after a hearing, if the Chief finds: (1) The permit holder refuses to allow any Police or Health inspector inside the establishment. (§2720) (2) The Director of Public Health determines that the establishment is being operated without regard for the public health.	The Director of Public Health may revoke or suspend any massage establishment permit, after a hearing, if the Director finds: 1) The permit holder has refused to permit any duly authorized City inspector to inspect the premises or the operations therein. (2) The Director of Public Health determines that the establishment is being operated without regard for the public health.	The Director of Public Health may revoke or suspend any massage practitioner permit, after a hearing, if the Director finds: (Silent) (2) The Director determines by clear and convincing evidence that the establishment is being operated without regard for the public health. (§1814)

II. MESSAGE PRACTITIONERS

Subject Matter	Current Provisions of Police Code	File Number 991965 (Sponsor: Yaki)	File Number 991109 (Sponsor: Ammiano)
Massage practitioners requiring permits	All massage practitioners must apply for a permit. There is only type of permit. (§2705)	All massage practitioners must apply for a permit. Persons may apply for a permit as either a “ <i>general massage practitioner</i> ” or as a “ <i>therapeutic massage practitioner.</i> ” (§1805)	Same as Police Code. (§1803)
Application for massage practitioner permit	An applicant for a permit to practice massage must provide, under penalty of perjury, the following information: (1) <i>all criminal convictions except minor traffic violations</i> ; (2) the business, occupation, or employment of the	An applicant for a <i>general massage practitioner</i> permit must provide, under penalty of perjury, the following information: (1) <i>all felony or misdemeanor convictions</i> ; (2) any other information required by the Director of Public Health,	An applicant for a permit to practice massage must provide, under penalty of perjury, the following information: (1) <i>all felony convictions or misdemeanor sexual battery convictions</i> ; and (2) any other information required by the Director of

	<p>applicant for the three years immediately preceding the date of application; and</p> <p>(3) applicant's weight, height, color of hair and eyes. (§2707)</p> <p>(4) Under §2735 MPC, applicants must take a written exam.</p> <p>The Chief of Police has the authority to take fingerprints and additional photographs and to verify an applicant's height and weight. (§2703)</p>	<p>including, but not limited to, information related to the health, hygiene and sanitation of the premises. (§1806)</p> <p>(3) As part of the application process, each <i>applicant shall take a written or oral test examination designed by the Director and offered no less than once every two weeks</i>. The examination shall cover basic massage skills, include 10 questions and have a passing score of 80%.</p> <p>An applicant for a <i>therapeutic massage practitioner</i> permit must provide, under penalty of perjury, the following information:</p> <p>(3) weight, height, and color of hair and eyes;</p> <p>(4) two prints of a recent passport-size photo of applicant;</p> <p>(5) employment history of applicant for five years immediately prior to date of application;</p> <p>(6) all felony or misdemeanor convictions;</p> <p>(7) the name and address of the Recognized School of Massage attended, the dates attended, and a copy of the diploma or certificate of graduation;</p> <p>(8) either proof of membership in a state or national qualifying professional organization or proof of National Certification, and attendance at professional classes or professional experience; and satisfies one of the conditions hours of instruction.</p> <p>(9) any other information required by the Director of Public Health to discover the truth of the matter set forth in the application. (§1807)</p> <p>(10) As part of the application</p>	<p>Public Health, including, but not limited to, information related to the health, hygiene and sanitation of the premises. (§1804)</p>
--	--	---	---

		<p>process, <i>each applicant shall take a written or oral test examination designed by the Director and offered no less than once every two weeks.</i></p> <p>The examination shall cover basic massage skills, include 10 questions and have a passing score of 80%.</p>	
<p>Issuance of massage practitioner permit</p>	<p>The Chief of Police may issue a massage practitioner permit within 21 days following a hearing unless the Chief finds:</p> <p>(Silent)</p> <p>(Silent)</p> <p>(3) The applicant has been convicted of a violent felony, a crime involving sexual misconduct with children, or a prostitution-related crime.</p> <p>(4) Under §2735 MPC, successful completion of written exam.</p> <p>The Chief may issue a permit to any person convicted of any of the crimes above if the crime occurred five years prior to the date of the application and the applicant was not subsequently convicted of a felony or one of the crimes above. (§2714)</p>	<p>The Director of Public Health shall within 14 days following a hearing, or if no hearing is held, within 60 business days, issue a <i>general massage practitioner permit</i>, or mail a written statement of his or her reasons for denial to the applicant. No permit shall be issued if the Director finds:</p> <p>(1) The applicant has not fully complied with the provisions of this Article;</p> <p>(2) The applicant has provided materially false documents or testimony;</p> <p>(3) <i>The applicant has failed to receive a passing score on the Director's examination.</i></p> <p>(4) The applicant has been convicted of a violent felony, a misdemeanor sexual battery, a crime involving sexual misconduct with children, or a prostitution-related crime.</p> <p>(5) <i>The applicant failed to receive a passing score on a an exam given by the Director to test the applicant's massage skills.</i></p> <p>The Director may issue a permit to persons convicted of any of the crimes above if the offense was <i>not violent, occurred at least five years prior</i> to the date of the application, and the applicant was <i>not subsequently convicted of one of the crimes above.</i> (§1814)</p> <p>The Director of Public Health shall within 14 days following a hearing, or if no hearing is held, within 60</p>	<p>The Director of Public Health must issue a massage practitioner permit within 14 days following a hearing unless the Director finds:</p> <p>(1) The applicant has not fully complied with the provisions of this Article;</p> <p>(2) The applicant has provided materially false documents or testimony;</p> <p>(3) The applicant has been convicted of <i>any felony or any misdemeanor sexual battery.</i></p> <p>The Director may issue a permit to any person convicted of a felony if the crime occurred <i>three years</i> prior to the date of the application and the applicant was <i>not subsequently convicted of a felony.</i> (§1810)</p>

		<p>business days, issue a <i>therapeutic massage practitioner</i> permit, or mail a written statement of his or her reasons for denial to the applicant. No permit shall be issued if the Director finds:</p> <p>(1) The applicant has not fully complied with the provisions of this Article;</p> <p>(2) The applicant has provided materially false documents or testimony;</p> <p>(3) <i>the applicant has failed to receive a passing score on the Director's examination.</i></p> <p>(4) Within 5 years immediately prior to the date of application, the applicant has had any license or permit related to the practice of massage revoked;</p> <p>(5) The applicant or any other individual engaged in the operation of the establishment has been convicted of a violent felony, a misdemeanor sexual battery, a crime involving sexual misconduct with children, or a prostitution-related crime.</p> <p>The Director may issue a permit to persons convicted of any of the crimes above if the offense was not violent, occurred at least five years prior to the date of the application, and was not subsequently convicted of one of the crimes above. (§1815)</p>	
Revocation or suspension of massage practitioner permit	<p>The Chief of Police may revoke or suspend any massage practitioner permit, after a public hearing, if the Chief finds:</p> <p>(1) The permit holder has been <i>convicted of a crime requiring registration as a sex offender</i>; or</p>	<p>The Director of Public Health may revoke or suspend any general massage practitioner permit, after a public hearing, if the Director finds:</p> <p>(1) The permit holder has been <i>convicted of a prostitution-related crime</i>; or</p>	<p>The Director of Public Health may revoke or suspend any massage practitioner permit, after a public hearing, if he/she:</p> <p>(1) The permit holder has been convicted of <i>any felony or misdemeanor sexual battery</i>; or</p>

	(2) The permit holder has <i>violated certain prostitution-related laws.</i>	(2) The applicant has provided materially false documents or testimony. (§1821) The Director of Public Health may revoke or suspend any <i>therapeutic massage practitioner</i> permit, after a public hearing, if the Director finds: (1) The permit holder has been convicted of a <i>prostitution-related crime</i> ; (2) The applicant has provided materially false documents or testimony; or (3) Within 5 years immediately prior to the date of application, the applicant has had any license or permit related to the practice of massage revoked. (§1822)	(2) The applicant has provided materially false documents or testimony.
--	--	--	---

III. OTHER PROVISIONS

Subject Matter	Current Provisions of Police Code	File Number 991965 (Sponsor: Yaki)	File Number 991109 (Sponsor: Ammiano)
Hearings on Permit applications	Public hearings required for all permits. (§2711)	The Director of Public Health has discretion to set hearings, public or private. (§1810)	Not Addressed
Inspections	The Police Department and the Department of Public Health must inspect each massage establishment at least twice a year for the purpose of determining that the establishment is in compliance with the provisions of this Article. (§2727)	Any member of the Police Dept. or the Dept. of Public Health may inspect any massage establishment (does not include outcall massage services or solo practitioner massage establishments) for the purpose of determining that the establishment is in compliance with the provisions of this Article or for the purpose of providing health and safety information to establishment employees. (§1825)	The Director of Public Health may inspect any massage establishment for the purpose of determining that the establishment is in compliance with the provisions of this Article or for the purpose of providing health and safety information to establishment employees. (§1818)
Penalties	Any person who violates any provision of this Article shall be guilty of a misdemeanor. Any owner or operator of a massage establishment who knowingly employs a massage practitioner who does not have a valid massage practitioner	Any person who violates any provision of this Article shall be subject to an administrative fine not to exceed \$500.00. Any owner or operator of a massage establishment who knowingly employs a massage practitioner who does not have a valid massage practitioner permit shall be subject to	Any person who violates any provision of this Article shall be subject to an administrative fine not to exceed \$500.00. Any owner or operator of a massage establishment who knowingly employs a massage practitioner who does not have a valid massage practitioner

	permit shall be guilty of a misdemeanor. (§2736)	an administrative fine not to exceed \$500.00. (§1833)	permit shall be subject to an administrative fine not to exceed \$500.00. (§1826)
--	--	--	---