

1 [Planning Code - Permitting Accessory Massage Uses, with a Conditional Use Permit, in the  
2 North of Market Residential Special Use District]

3 **Ordinance amending the Planning Code to permit accessory massage uses, with a**  
4 **Conditional Use permit, in the North of Market Residential Special Use District;**  
5 **affirming the Planning Department’s determination under the California Environmental**  
6 **Quality Act; and making findings, including findings of public necessity, convenience**  
7 **and welfare, and findings of consistency with the General Plan, and the eight priority**  
8 **policies of Planning Code, Section 101.1.**

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10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
13 **Board amendment additions** are in double-underlined Arial font.  
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
15 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
16 subsections or parts of tables.

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

18 Section 1. Findings.

19 (a) The Planning Department has determined that the actions contemplated in this  
20 ordinance comply with the California Environmental Quality Act (California Public Resources  
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
22 Supervisors in File No. 151280 and is incorporated herein by reference. The Board affirms  
23 this determination.

24 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
25 adopted findings [OR, the Planning Department determined] that the actions contemplated in  
this ordinance are consistent, on balance, with the City’s General Plan and eight priority  
policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy

1 of said Resolution is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_,  
2 and is incorporated herein by reference.

3 (c) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, approved  
4 this legislation, recommended it for adoption by the Board of Supervisors, and adopted  
5 findings that it will serve the public necessity, convenience and welfare. Pursuant to Planning  
6 Code Section 302, the Board adopts these findings as its own. A copy of said Resolution is  
7 on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated by  
8 reference herein.

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10 Section 2. The Planning Code is hereby amended by revising Section 249.5, to read  
11 as follows:

12 SEC. 249.5. NORTH OF MARKET RESIDENTIAL SPECIAL USE DISTRICT.

13 (a) General. A special use district entitled the "North of Market Residential Special  
14 Use District," which includes RC-4 and P Use Districts, the boundaries of which are shown on  
15 Sectional Map No. SU01 of the Zoning Map of the City and County of San Francisco, is  
16 hereby established for the purposes set forth below.

17 (b) Purposes. In order to protect and enhance important housing resources in an area  
18 near downtown, conserve and upgrade existing low and moderate income housing stock,  
19 preserve buildings of architectural and historic importance and preserve the existing scale of  
20 development, maintain sunlight in public spaces, encourage new infill housing at a compatible  
21 density, limit the development of tourist hotels and other commercial uses that could  
22 adversely impact the residential nature of the area, and limit the number of commercial  
23 establishments which are not intended primarily for customers who are residents of the area,  
24 the following controls are imposed in the North of Market Residential Special Use District.

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1 (c) Controls. The following zoning controls are applicable in the North of Market  
2 Residential Special Use District. Certain controls are set forth in other Sections of this Code  
3 and are referenced herein.

4 (1) Conditional Use Criteria. In making determinations on applications for  
5 Conditional Use authorizations required for uses located within the North of Market  
6 Residential Special Use District, the Planning Commission shall consider the purposes as set  
7 forth in Subsection (b) above, in addition to the criteria of Section 303(c) of this Code.

8 (2) Notwithstanding the Zoning Control Table for RC Districts found in Section  
9 209.3 of this Code, commercial establishments shall be limited to the ground floor and the first  
10 basement floor, except that such establishments may be permitted on the second story as a  
11 conditional use if authorized pursuant to Section 303 and Section 249.5(c)(1) of this Code.

12 (3) The following uses are not permitted:

13 (A) A Hotel or Motel; and

14 (B) Massage Establishments which are not incidental to Hospitals,  
15 Residential Care Facilities, Health Services, and Social Service or Philanthropic Facility uses  
16 or are not incidental to a health club, gymnasium or other facility with a regular membership or  
17 other facility which is used primarily for instruction and training in body building, exercising,  
18 reducing, sports, dancing or other similar physical activities; except as allowed under subsection  
19 249.5(f), below.

20 (4) In the portion of the area designated as Subarea No. 1 of the North of  
21 Market Residential Special Use District, as shown on Section Map No. SU01 of the Zoning  
22 Map, the density ratio shall be one dwelling unit for each 125 square feet of lot area; in  
23 Subarea No. 2, as shown on Section Map No. SU01 of the Zoning Map, the density ratio shall  
24 be one dwelling unit for each 200 feet of lot area. The double density provision for Senior  
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1 Housing, as defined in Section 102, shall not result in greater density than that permitted in an  
2 RC-4 District.

3 (5) A bulk district "T" shall apply pursuant to the provisions of Section 270,  
4 Table 270 of this Code.

5 (6) Special exceptions to the 80-foot base height limit in height and bulk  
6 districts 80-120-T and 80-130-T may be granted pursuant to the provisions of Section 263.7 of  
7 this Code.

8 (7) Building setbacks are required in this district pursuant to Section 132.2;  
9 provisions for exceptions are also set forth in Section 132.2 of this Code.

10 (8) Exceptions to the rear yard requirements for an RC-4 District may be  
11 granted pursuant to Section 134(g) of this Code.

12 (9) All provisions of the Planning Code applicable in an RC-4 Use District shall  
13 apply within that portion of the district zoned RC-4, except as specifically provided above. All  
14 provisions of the Planning Code applicable in a P Use District shall apply within that portion of  
15 the district zoned P, except as specifically provided above.

16 (10) All demolitions of buildings containing residential units shall be permitted  
17 only if authorized as a conditional use under Section 303 of this Code, unless the Director of  
18 the Department of Building Inspection or the Chief of the Bureau of Fire Prevention and Public  
19 Safety determines that the building is unsafe or dangerous and that demolition is the only  
20 feasible means to secure the public safety. When considering whether to grant a conditional  
21 use permit for the demolition, in lieu of the criteria set forth in Planning Code Section 303(c),  
22 consideration shall be given to the purposes of the North of Market Residential Special Use  
23 District set forth in Section 249.5(b), above, to the adverse impact on the public health, safety  
24 and general welfare due to the loss of existing housing stock in the district and to any  
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1 unreasonable hardship to the applicant if the permit is denied. Demolition of residential hotel  
2 units shall also comply with the provisions of the Residential Hotel Ordinance.

3 (d) Liquor Establishments. In addition to all other applicable controls set forth in this  
4 Code, Liquor Establishments in the North of Market Residential Special Use District shall be  
5 subject to the controls set forth in this Section.

6 (1) No Off-Sale Liquor Establishments shall be permitted in the North of Market  
7 Residential Special Use District.

8 (2) An Off-Sale Liquor Establishment lawfully existing in the North of Market  
9 Residential Special Use District and selling alcoholic beverages as licensed by the State of  
10 California prior to the effective date of this legislation may continue operation only under the  
11 following conditions, as provided by California Business and Professions Code Section 23790:

12 (A) The premises shall retain the same type of retail liquor license within  
13 a license classification; and

14 (B) The licensed premises shall be operated continuously without  
15 substantial change in mode or character of operation.

16 (3) The prohibition on Off-Sale Liquor Establishments shall not be interpreted  
17 to prohibit the following, provided that the type of California liquor license does not change,  
18 the location of the establishment does not change, and the square footage used for the  
19 display and sale of alcoholic beverages does not increase:

20 (A) A change in ownership of an Off-Sale Liquor Establishment or an  
21 owner-to-owner transfer of a California liquor license; or

22 (B) Re-establishment, restoration or repair of an existing Off-Sale Liquor  
23 Establishment on the same lot after total or partial destruction or damage due to fire, riot,  
24 insurrection, toxic accident or act of God; or

1 (C) Temporary closure of an existing Off-Sale Liquor Establishment for  
2 not more than ninety (90) days for repair, renovation or remodeling.

3 (4) The prohibition on Off-Sale Liquor Establishments shall not be interpreted  
4 to prohibit the following:

5 (A) Temporary uses, as described in Planning Code Section 205.1; or

6 (B) Establishment of an Off-Sale Liquor Establishment if application for  
7 such Off-Sale Liquor Establishment is on file with the California Department of Alcoholic  
8 Beverage Control prior to the effective date of this legislation; or

9 (C) Re-location of an existing Off-Sale Liquor Establishment in the North  
10 of Market Residential Special Use District to another location within the North of Market  
11 Residential Special Use District with conditional use authorization from the Planning  
12 Commission, provided that (i) the type of California liquor license does not, change, (ii) the  
13 square footage used for the display and sale of alcoholic beverages does not increase, and  
14 (iii) the original premises shall not be occupied by an Off-Sale Liquor Establishment unless by  
15 another Off-Sale Liquor Establishment that is also relocating from within the North of Market  
16 Residential Special Use District. Any such conditional use authorization shall include a  
17 requirement that the establishment comes with the "Good Neighbor Policies" set forth in  
18 Subsection (d)(6) below; or

19 (D) A change in liquor license from a Type 21 (Off-Sale General) to a  
20 Type 20 (Off-Sale Beer and Wine), provided that the square footage used for the display and  
21 sale of alcoholic beverages does not increase.

22 (5) The prohibition on Off-Sale Liquor Establishments shall be interpreted to  
23 prohibit the transfer of any California Alcoholic Beverage Control Board off-sale liquor license  
24 from a location outside of the North of Market Residential Special Use District to a location  
25 within the North of Market Residential Special Use District or the issuance of any original

1 California Alcoholic Beverage Control Board off-sale liquor license for a location within the  
2 North of Market Residential Special Use District.

3 (6) The following "Good Neighbor Policies" shall apply to all Liquor  
4 Establishments in the North of Market Residential Special Use District in order to maintain the  
5 safety and cleanliness of the premises and vicinity:

6 (A) Employees of the establishment shall walk a 100-foot radius from  
7 the premises some time between 30 minutes after closing time and 8:00 a.m. the following  
8 morning, and shall pick up and dispose of any discarded beverage containers and other trash  
9 left by patrons;

10 (B) The establishment shall provide outside lighting in a manner  
11 sufficient to illuminate street and sidewalk areas and adjacent parking, as appropriate to  
12 maintain security, without disturbing area residences;

13 (C) No alcoholic beverages shall be consumed on any outdoor property  
14 adjacent to the establishment and which is under the control of the establishment, excepting  
15 those areas of the property that are enclosed and not visible from the sidewalk. are intended  
16 for patron services, are supervised by the establishment, and are not located adjacent to any  
17 sidewalk areas;

18 (D) No more than 33 percent of the square footage of the windows and  
19 clear doors of the establishment shall bear advertising or signage of any sort, and all  
20 advertising and signage shall be placed and maintained in a manner that ensures that law  
21 enforcement personnel have a clear and unobstructed view of the interior of the premises,  
22 including the area in which the cash registers are maintained, from the exterior public  
23 sidewalk or entrance to the premises. This requirement shall not apply to premises where  
24 there are no windows, or where existing windows are located at a height that precludes a view  
25 of the interior of the premises to a person standing outside the premises;

1 (E) No person under the age of 21 shall sell or package alcoholic  
2 beverages;

3 (F) Employees of the establishment shall regularly police the area under  
4 the control of the establishment in an effort to prevent the loitering of persons about the  
5 premises; and

6 (G) The establishment shall promptly remove any graffiti from the  
7 exterior of the premises.

8 (7) For purposes of this Section, the following definitions shall apply:

9 (A) "Liquor Establishment" shall mean any enterprise selling alcoholic  
10 beverages pursuant to a California Alcoholic Beverage Control Board license.

11 (B) "Off-Sale Liquor Establishment" shall mean a Liquor Store, as  
12 defined in Section 102 of this Code.

13 (C) "Alcoholic Beverages" shall mean "alcoholic beverages," as defined  
14 by California Business and Professions Code Sections 23004 and 23025.

15 (D) "Sell" or "Sale" shall mean and include any retail transaction  
16 whereby, for any consideration, an alcoholic beverage is transferred from one person to  
17 another.

18 (e) Fringe Financial Services. In addition to all other applicable controls set forth in  
19 this Code, properties in the North of Market Residential Special Use District are within the  
20 Fringe Financial Service Restricted Use District established by Section 249.35 and are subject  
21 to the controls and exemptions set forth in Section 249.35.

22 (f) Accessory Massage Uses. Massage Uses, as defined in Section 29.5 of the Health Code,  
23 are allowed as accessory uses to permitted Personal Service uses, provided that:

24 (1) the Massage Use first obtain a Conditional Use permit pursuant to Section  
25 303(n) of this Code;

1                   (2) the accessory Massage Use occupies no more than 25% of the gross square  
2 footage of the Personal Service use;

3                   (3) the hours of operation of the Massage Use are limited from 10:00 a.m to 10:00  
4 p.m.; and

5                   (4) the Massage Use contains no more than three Massage Practitioners or CAMTC  
6 Certified Practitioners, as these terms are defined in Section 29.5 of the Health Code.

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

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13           Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
17 additions, and Board amendment deletions in accordance with the “Note” that appears under  
18 the official title of the ordinance.

19  
20 APPROVED AS TO FORM:  
21 DENNIS J. HERRERA, City Attorney

22 By: \_\_\_\_\_  
23       ANDREA RUIZ-ESQUIDE  
24       Deputy City Attorney

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