

File No. 141303

Committee Item No. 2

Board Item No. 7

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use & Transportation

Date May 4, 2015

Board of Supervisors Meeting

Date May 19, 2015

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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Completed by: Andrea Ausberry Date April 30, 2015

Completed by: _____ Date _____

[Planning Code - Massage Establishments]

1
 2 **Ordinance amending the Planning Code to require that massage establishments, with**
 3 **certain exceptions, obtain a Conditional Use permit; to establish a legitimization**
 4 **program for certain massage establishments; and to make conforming amendments;**
 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 under Planning Code, Section 302, and findings of consistency with the**
 8 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

9
 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. 141303 and is incorporated herein by reference. The Board affirms
 23 this determination.

24 (b) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
 25 ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in
 Planning Commission Resolution No. 19344, and incorporates such reasons by this reference

1 thereto. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File
2 No.141303.

3 (c) On March 26, 2015, the Planning Commission, in Resolution No. 19344, adopted
4 findings that the actions contemplated in this ordinance are consistent, on balance, with the
5 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
6 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
7 Board of Supervisors in File No. 141303, and is incorporated herein by reference.

8
9 Section 2. The Planning Code is hereby amended by revising Sections 102, 202.2,
10 790.60, 890.60, 790.114, and 890.114 to read as follows:

11 **SEC. 102. DEFINITIONS.**

12 * * * *

13 **Massage Establishment.** A Retail Sales and Service Use defined by Sections ~~29.51~~
14 ~~through 29.32~~ of the ~~San Francisco~~ Health Code. For purposes of the Planning Code only,
15 "Massage Establishment" shall include both a "Massage Establishment" and a "Sole
16 Practitioner Massage Establishment," as these terms are defined in Section 29.5 of the Health
17 Code, except a use that is a sole proprietorship, as defined in California Business and Professions
18 Code Section 4612(b)(1), and where the sole proprietor is certified pursuant to the California Business
19 and Professions Code Section 4600, et seq., or one that employs or uses only persons certified by the
20 State's Massage Therapy Organization, pursuant to the California Business and Professions Code
21 Section 4600, et seq., provided that the ~~The m~~Massage eEstablishment has shall first obtained a
22 permit from the Department of Public Health pursuant to Section 29.252 of the ~~San Francisco~~
23 Health Code, or a letter from the Director of the Department of Public Health certifying that the
24 establishment is exempt from such a permit under Section 29.25(b) of the Health Code. and provided
25 that:

1 (a) Controls. Massage Establishments require a Conditional Use authorization from the
2 Planning Commission, pursuant to Section 303 of this Code. When considering an application for a
3 Conditional Use authorization pursuant to this subsection (a), the Planning Commission shall consider,
4 in addition to the criteria listed in Section 303(c), the criteria outlined in Section 303(n).

5 (ab) Exceptions. A Massage Establishment shall not require a Conditional Use authorization if
6 the Massage Establishment satisfies one or more of the following conditions:

7 (1) The massage use is accessory to a principal use, if the massage use is
8 accessed by the principal use and

9 (1A) the principal use is a dwelling unit and the massage use conforms to
10 the requirements of Section 204.1, for accessory uses for dwelling units in R or NC districts;

11 or

12 (2B) the principal use is a Tourist Hotel that contains 100 or more rooms
13 or an Institutional Use as defined in this Code; ~~or.~~

14 (b2) The only massage service provided is chair massage, such service is
15 visible to the public, and customers are fully clothed at all times.

16 (3) It is a Sole Practitioner Massage Establishment, as defined in Section 29.5 of the
17 Health Code.

18 ~~(c) If the massage use does not meet the requirements of (a) or (b), above, then the massage use~~
19 ~~shall obtain a conditional use permit from the Planning Commission, pursuant to Section 303 of this~~
20 ~~Code. When considering an application for a conditional use permit pursuant to this Subsection, the~~
21 ~~Planning Commission shall consider, in addition to the criteria listed in Section 303(c), the criteria~~
22 ~~outlined in Section 303(o).~~

23 * * * *

24 **Service, Health.** A Retail Sales and Service Use that provides medical and allied
25 health services to the individual by physicians, surgeons, dentists, podiatrists, psychologists,

1 psychiatrists, acupuncturists, chiropractors, or any other health-care professionals when
2 licensed by a State-sanctioned Board overseeing the provision of medically oriented services.
3 It includes a clinic, primarily providing outpatient care in medical, psychiatric, or other health
4 services, and not part of a Hospital or medical center, as defined by this Section of the Code.

5 ~~It also includes a massage establishment, as defined by Sections 29.1 through 29.32 of the Health~~
6 ~~Code, that is a sole proprietorship, as defined in California Business and Professions Code Section~~
7 ~~4612(b)(1), and where the sole proprietor is certified pursuant to the California Business and~~
8 ~~Professions Code Section 4600, et seq., and one that employs or uses only persons certified by the~~
9 ~~State's Massage Therapy Organization, pursuant to the California Business and Professions Code~~
10 ~~Section 4600, et seq.~~

11 * * * *

2 SEC. 202.2. LOCATION AND OPERATING CONDITIONS.

13 (a) **Retail Sales and Service Uses.** The Retail Sales and Service Uses listed below
14 shall be subject to the corresponding conditions:

15 * * * *

16 (4) **Massage Establishments.** Any Massage Establishment found to be operating,
17 conducted, or maintained contrary to this Code or Health Code Article 29 shall be found to be in
18 violation of this Code and will be subject to enforcement as provided in Section 176 of the Planning
19 Code. For three years following closure of a Massage Establishment for violations of this Code or the
20 Health Code no new Massage Establishment shall be approved at the site where the former Massage
21 Establishment was closed.

22 * * * *

23 SEC. 790.60. MASSAGE ESTABLISHMENT.

24 (a) Definition. Massage eEstablishments are defined by Section ~~1900~~ 29.5 of the ~~San~~
25 ~~Francisco~~ Health Code. For purposes of the Planning Code only, "Massage Establishment"

1 shall include both a "Massage Establishment" and a "Sole Practitioner Massage
2 Establishment," as these terms are defined in Section 29.5 of the Health Code. Any
3 Massage Establishment shall have first obtained a permit from the Department of Public
4 Health pursuant to Section ~~1908~~ 29.25 of the ~~San Francisco~~ Health Code, or a letter from the
5 Director of the Department of Public Health certifying that the establishment is exempt from such a
6 permit under Section 29.25(b).

7 (b) Controls. Massage Establishments shall *generally* be subject to Conditional Use
8 authorization. Certain exceptions to the Conditional Use requirement for accessory use
9 massage are described in subsection (c) below. When considering an application for a
10 conditional use permit pursuant to this subsection (b), the Planning Commission shall
11 consider, in addition to the criteria listed in Section 303(c), the additional criteria described in
12 Section 303(~~en~~).

13 (c) Exceptions. Certain exceptions would allow a massage use to be "permitted"
14 without a Conditional Use authorization including:

15 (1) Certain Accessory Use Massage, provided that the massage use is
16 accessory to a principal use; the massage use is accessed by the principal use; and *the*
17 principal use is:

18 (A) ~~the principal use is~~ a dwelling unit and the massage use conforms to
19 the requirements of Section 204.1 of this Code, for accessory uses for dwelling units in R or
20 NC districts; or

21 (B) ~~the principal use is~~ a tourist hotel as defined in Section 790.46 of this
22 Code, that contains 100 or more rooms; or

23 (C) ~~the principal use is~~ a large institution as defined in Section 790.50 of
24 this Code; or

1 (D) ~~the principal use is~~ a hospital or medical center, as defined in Section
2 790.44 of this Code.

3 (2) Chair Massage. The only massage service provided is chair massage, such
4 service is visible to the public, and customers are fully-clothed at all times.

5 (3) Sole Practitioner Massage Establishments, as defined in Section 29.5 of the Health
6 Code.

7 ~~(3) California State Certification. A State-certified massage establishment, as defined~~
8 ~~by Section 1900 of the San Francisco Health Code, that is a sole proprietorship, as defined in~~
9 ~~California Business and Professions Code Section 4612(b)(1), and where the sole proprietor is~~
10 ~~certified pursuant to the California Business and Professions Code Section 4600 et seq., or one that~~
11 ~~employs or uses only persons certified by the state's Massage Therapy Organization, pursuant to the~~
12 ~~California Business and Professions Code Section 4600 et seq., shall be regulated as a "Medical~~
13 ~~Service" use as defined by Section 790.114 or 890.114 provided that the massage establishment has~~
14 ~~first obtained a permit from the Department of Public Health pursuant to Section 1908 of the San~~
15 ~~Francisco Health Code.~~

16 ~~(d) Enforcement. Any massage establishment or exempted massage use found to be operating,~~
17 ~~conducted or maintained contrary to the provisions of this Code shall be found to be operating in~~
18 ~~violation of this Code and will be subject to enforcement as provided in Section 176. No application or~~
19 ~~building permit to establish a massage establishment or exempted massage use will be accepted within~~
20 ~~one year after the subject property is found operating in violation of the provisions of this Code.~~

21 SEC. 890.60. MASSAGE ESTABLISHMENT.

22 (a) Definition. Massage eEstablishments are defined by Section ~~1900~~ 29.5 of the ~~San~~
23 ~~Francisco~~ Health Code. For purposes of the Planning Code only, "Massage Establishment"
24 shall include both a "Massage Establishment" and a "Sole Practitioner Massage
25 Establishment," as these terms are defined in Section 29.5 of the Health Code. Any

1 mMessage eEstablishment shall have first obtained a permit from the Department of Public
2 Health pursuant to Section ~~1908-29.25~~ of the *San Francisco* Health Code, or a letter from the
3 Director of the Department of Public Health certifying that the establishment is exempt from such a
4 permit under Section 29.25(b).

5 (b) Controls. Message eEstablishments shall *generally* be subject to Conditional Use
6 authorization. Certain exceptions to the Conditional Use for accessory use massage are
7 described in subsection (c) below. When considering an application for a conditional use
8 permit pursuant to this subsection, the Planning Commission shall consider, in addition to the
9 criteria listed in Section 303(c), the additional criteria described in Section 303(~~ne~~).

10 (c) Exceptions. Certain exceptions would allow a massage use to be "permitted"
11 without a Conditional Use authorization including:

12 (1) Certain Accessory Use Massage and provided that the massage use is
13 accessory to a principal use; the massage use is accessed by the principal use; and the
14 principal use is:

15 (A) the principal use is a dwelling unit and the massage use conforms to
16 the requirements of Section 204.1, for accessory uses for dwelling units in R or NC districts;
17 or

18 (B) the principal use is a tourist hotel as defined in Section 790.46 of this
19 Code, that contains 100 or more rooms; or

20 (C) the principal use is a large institution as defined in Section 790.50 of
21 this Code; or

22 (D) the principal use is a hospital or medical center, as defined in Section
23 790.44 of this Code.

24 (2) Chair Massage. The only massage service provided is chair massage, such
25 service is visible to the public, and customers are fully-clothed at all times.

1 (3) Sole Practitioner Massage Establishments, as defined in Section 29.5 of the Health
2 Code.

3 ~~(3) California State Certification. A State certified massage establishment, as defined by~~
4 ~~Section 1900 of the San Francisco Health Code, that is a sole proprietorship, as defined in California~~
5 ~~Business and Professions Code Section 4612(b)(1), and where the sole proprietor is certified pursuant~~
6 ~~to the California Business and Professions Code Section 4600 et seq., or one that employs or uses only~~
7 ~~persons certified by the state's Massage Therapy Organization, pursuant to the California Business and~~
8 ~~Professions Code Section 4600 et seq., shall be regulated as a "Medical Service" use as defined by~~
9 ~~Section 790.114 or 890.114 provided that the massage establishment has first obtained a permit from~~
10 ~~the Department of Public Health pursuant to Section 1908 of the San Francisco Health Code.~~

11 ~~(d) Enforcement. Any massage establishment or exempted massage use found to be operating,~~
12 ~~conducted or maintained contrary to the provisions of this Code shall be found to be operating in~~
13 ~~violation of the Code and will be subject to enforcement as provided in Section 176. No application or~~
14 ~~building permit to establish a massage establishment or exempted massage use will be accepted within~~
15 ~~one year after the subject property if is found operating in violation of the provisions of this Code.~~

16 **SEC. 790.114. SERVICE, MEDICAL.**

17 A retail use which provides medical and allied health services to the individual by
18 physicians, surgeons, dentists, podiatrists, psychologists, psychiatrists, acupuncturists,
19 chiropractors, or any other health-care professionals when licensed by a State-sanctioned
20 Board overseeing the provision of medically oriented services. It includes a clinic, primarily
21 providing outpatient care in medical, psychiatric or other health services, and not part of a
22 hospital or medical center, as defined in Section 790.44 of this Code. ~~It also includes a massage~~
23 ~~establishment, as defined by Section 1900 of the Health Code, that is a sole proprietorship, as defined~~
24 ~~in California Business and Professions Code Section 4612(b)(1), and where the sole proprietor is~~
25 ~~certified pursuant to the California Business and Professions Code Section 4600 et seq., and one that~~

1 ~~employs or uses only persons certified by the state's Massage Therapy Organization, pursuant to the~~
2 ~~California Business and Professions Code Section 4600 et seq.~~

3 **SEC. 890.114. SERVICE, MEDICAL.**

4 A use, generally an office use, which provides medical and allied health services to the
5 individual by physicians, surgeons, dentists, podiatrists, psychologists, psychiatrists,
6 acupuncturists, chiropractors, or any other health-care professionals when licensed by a
7 State-sanctioned Board overseeing the provision of medically oriented services. It includes a
8 clinic, primarily providing outpatient care in medical, psychiatric or other health services, and
9 not part of a hospital or medical center, as defined in Section 890.44 of this Code. ~~It also~~
10 ~~includes a massage establishment, as defined by Section 1900 of the Health Code, that is a sole~~
11 ~~proprietorship, as defined in California Business and Professions Code Section 4612(b)(1), and where~~
12 ~~the sole proprietor is certified pursuant to the California Business and Professions Code Section 4600~~
13 ~~et seq., and one that employs or uses only persons certified by the state's Massage Therapy~~
14 ~~Organization, pursuant to the California Business and Professions Code Section 4600 et seq.~~

15
16 Section 3. The Planning Code is hereby amended by adding Section 177, to read as
17 follows:

18 **SEC. 177. LEGITIMIZATION OF CERTAIN MASSAGE ESTABLISHMENTS.**

19 (a) Intent. The purpose of this Section 177 is to establish a time-limited program whereby
20 existing Massage Establishments that have operated without required permits may seek those permits.

21 (b) Legitimization Program for Certain Massage Establishments. A Massage Establishment
22 shall be considered a Legal Non Conforming Use or a Permitted Conditional Use, and shall be
23 authorized to continue to operate without obtaining a Conditional Use authorization from the Planning
24 Commission, as required by Sections 102, 790.60, and 890.60 of this Code, if it meets all of the
25 following requirements:

1 (1) As of January 19, 2015, it was operating in that location;

2 (2) As of to January 19, 2015, it obtained a business license from the City;

3 (3) As of to January 19, 2015, all employees obtained a valid certification from the
4 California Massage Therapy Council (CAMTC) or a valid permit from the Department of Public
5 Health (DPH);

6 (4) there are no open Police Department, Planning Department or DPH enforcement
7 cases against the Massage Establishment at the time of permit approval; and

8 (5) the Massage Establishment applies for a permit from DPH under Section 29.25 of
9 the Health Code within 90 days of the effective date of this Section 177.

10 (c) Website Notice. As soon as possible after enactment of this Section 177, the Planning
11 Department and DPH shall post notice of this legitimization program on their websites, inviting
12 Massage Establishment owners or operators to take advantage of this program, and describing its
13 contents and requirements. The notice shall clearly explain which zoning districts of the City permit
14 Massage Establishments as of right, which ones permit them with a Conditional Use authorization, and
15 which do not permit them.

16 (d) Determination of Applicability. Upon receiving a Massage Establishment referral from
17 the DPH pursuant to Section 29.28 of the Health Code, the Planning Department shall assess whether
18 the Massage Establishment meets the conditions set forth in this Section 177. Massage Establishment
19 owners or operators shall submit to the Planning Department evidence supporting the findings
20 required under Subsection (b), above. Such evidence may include, but is not necessarily limited to, the
21 following: rental or lease agreements, building or other permits, utility records, business licenses,
22 CAMTC certification materials, permits from DPH, or tax records. The Planning Department shall
23 determine compliance with this Section in its response to the referral form received from DPH.

24 (e) Limitation of Intensification, Expansion or Discontinuance. Enlargements,
25 Intensifications or Discontinuances of Massage Establishments that follow the Legitimization Process

1 authorized by this Section 177 shall be subject to the controls applicable under Sections 178, 181, 182
2 and 183 of this Code.

3 (f) Compliance with Other Requirements of the Planning Code. Massage Establishments that
4 follow the Legitimization Process authorized by this Section shall comply with all applicable
5 requirements of the Planning Code, other than those requirements from which they are specifically
6 exempted under this Section 177.

7 (g) Sunset. Unless readopted, this Section 177 shall sunset 18 months after its effective date.
8

9 Section 4. The Planning Code is hereby amended to revise the following Sections by
10 revising Subsection .54 or .34A of the accompanying Zoning Control Tables to substitute a
11 cross-reference to Article 29 of the Health Code for the existing cross-reference to Section
12 1900 of the Health Code.

13 Section 803.2. Uses Permitted In Chinatown Mixed Use Districts.

14 Section 810.1. Chinatown Community Business District.

15 Section 811.1. Chinatown Visitor Retail District.

16 Section 812.1. Chinatown Residential Neighborhood Commercial District.

17 Section 815. RSD – Residential/Service Mixed Use District.

18 Section 827. Rincon Hill Downtown Residential Mixed Use District (RH-DTR).

19 Section 829. South Beach Downtown Residential Mixed Use District (SB-DTR).

20 The City Attorney shall prepare the revisions and confirm that the San Francisco Code
21 Publisher has made the correct changes to the text of the Planning Code. At the direction of
22 the City Attorney, the publisher shall correct any other outdated cross-references to Section
23 1900 of the Health Code that need to be corrected in the Planning Code.
24
25

1 Section 5. The Planning Code is hereby amended by revising Sections 803.4 and
2 890.116, to read as follows:

3 **SEC. 803.4. USES PROHIBITED IN SOUTH OF MARKET AND EASTERN**
4 **NEIGHBORHOODS MIXED USE DISTRICTS.**

5 (a) Uses which are not specifically listed in this Article or Article 6 are not permitted in
6 South of Market Mixed Use Districts unless they qualify as a nonconforming use pursuant to
7 Sections 180 through 186.1 of this Code or are determined by the Zoning Administrator to be
8 permitted uses in accordance with Section 307(a) of this Code. Uses not permitted in any
9 South of Market District include, but are not limited to, the following: Adult entertainment,
10 bookstore or theater; amusement game arcade or similar enterprise; shooting gallery; general
11 advertising signs, except in the South of Market General Advertising Special Sign District;
12 animal kennel, riding academy or livery stable; automobile, truck, van, recreational
13 vehicle/trailer or camper sales, lease or rental; auto tow of inoperable vehicles; auto wrecking
14 operation; drive-up facility; hotel (except as permitted as a conditional use as provided in
15 Planning Code Section 818, Service/Secondary Office District), motel, hostel, inn, or bed and
16 breakfast establishment; heavy industry subject to Section 226(e) through (w) of this Code;
17 junkyard; landing field for aircraft; massage establishment subject to Section ~~218.1~~ 102 of this
18 Code; except in the Residential/Service Mixed Use District when provided in conjunction with
19 full-service spa services; mortuary; movie theater and sports stadium or arena.

20 **SEC. 890.116. SERVICE, PERSONAL.**

21 A retail use which provides grooming services to the individual, including salons,
22 cosmetic services, tattoo parlors, and health spas, excluding massage establishments subject
23 to Section ~~218.1~~ 102 of this Code located within South of Market Districts, or instructional
24 services not certified by the State Educational Agency, such as art, dance, exercise, martial
25


1 arts, and music classes, except that in the South of Market Districts, arts activities falling
2 within Section 102.2 shall not be considered personal services.

3
4 Section 6. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

8
9 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
11 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
12 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
13 additions, and Board amendment deletions in accordance with the "Note" that appears under
14 the official title of the ordinance.

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By:


19 ANDREA RUIZ ESQUIDE
Deputy City Attorney

20 n:\egana\as2014\1500236\01012980.doc

LEGISLATIVE DIGEST
(Substituted 4/28/2015)

[Planning Code - Massage Establishments]

Ordinance amending the Planning Code to require that massage establishments, with certain exceptions, obtain a Conditional Use permit; to establish a legitimization program for certain massage establishments; to make conforming amendments; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings, including findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Massage establishments are defined in the Health Code as "a fixed place of business where more than one person engages in or carries on, or permits to be engaged in or carried on, the practice of massage." "Massage," in turn, is defined in that Code as "any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft pads of the body...".

The Planning Code incorporates those definitions by reference, but distinguishes between two types of massage establishments. Those that are fully certified by the California Massage Therapy Organization, pursuant to the California Business and Professions Code Section 4600 et seq., are treated as "Medical Services" and are generally permitted uses. Those that are not fully certified under the state's program, on the other hand, are treated as "Massage Establishments" and, with some exceptions, are required to obtain a Conditional Use permit ("CU") from the Planning Commission.

Amendments to Current Law

This Ordinance would put an end to the distinction in the Planning Code between different types of massage establishments, treating all such establishments in the same way. It would require a CU from the Planning Commission for all massage establishments, with some exceptions. A Massage Establishment would not require a CU if it satisfies one or more of the following conditions:

- Where the massage use is accessory to a principal use, if the massage use is accessed by the principal use and the principal use:
 - is a dwelling unit and the massage use conforms to the requirements of Section 204.1, for accessory uses for dwelling units in R or NC districts; or

- is a Tourist Hotel that contains 100 or more rooms or an Institutional Use as defined in the Planning Code.
- The only massage service provided is chair massage, such service is visible to the public, and customers are fully clothed at all times.
- The Massage Establishment is a Sole Practitioner Massage Establishment, as defined in Section 29.5 of the Health Code.

The first two of these exceptions exist under current law applicable to Massage Establishments; the third is a new exception.

In all other cases, the Massage Establishment would require a CU.

The Ordinance creates a new Section 177, setting forth a legitimization program to allow existing Massage Establishments that have operated without the benefit of required permits to seek those permits. The legitimization program applies to Massage Establishments that, as of January 19, 2015, met the following conditions: (1) they were operating or functioning in their location; (2) they had obtained their business licenses from the City; (3) all their employees obtained valid certifications from the California Massage Therapy Council (CAMTC) or valid permits from the Department of Public Health (DPH). In addition, there must be no open Police Department, Planning Department or Health Department enforcement cases against the Massage Establishment at the time of permit approval, and the Massage Establishments must apply for a permit from DPH under Section 29.25 of the Health Code within 90 days of the effective date of the legitimization program. Massage Establishments that qualify under the legitimization program would be considered Legal Non Conforming Uses or Permitted Conditional Uses, and would be authorized to continue to operate without obtaining a Conditional Use authorization from the Planning Commission.

Background Information

This Ordinance is a substitute piece of legislation for an ordinance amending the Planning Code regulations for massage establishments that was introduced on December 16, 2014. It is also a companion piece of legislation to another ordinance, that seeks to amend the Health Code's regulation of massage establishments in the City. Those amendments are being introduced at the same time as this Ordinance – on April 28, 2015. Together, these two ordinances (the Planning Code and the Health Code amendments) seek to implement Assembly Bill No. 1147 ("A.B. 1147"), which was passed in September of 2014.

A.B. 1147 authorizes local governments to use their regulatory and land use authority to ensure the public's safety, reduce human trafficking, and enforce local standards for the operation of the business of massage therapy in the best interests of the affected community.

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SAN FRANCISCO PLANNING DEPARTMENT

March 30, 2015

Ms. Angela Calvillo, Clerk
Honorable Supervisor Tang
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2015-000709PCA:
Massage Establishments
Board File No. 141303
Planning Commission Recommendation: Approval with Modification

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Dear Ms. Calvillo and Supervisor Tang,

On March 26, 2015, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed amendments to the Massage Establishments Ordinance introduced by Supervisor Tang. At the hearing, the Planning Commission recommended approval with modification.

The Commission recommended modifications are:

1. Require all new and existing Massage Establishments to secure a permit through the Department of Public Health (DPH). The permitting process should be publically noticed, if possible.
2. Require a three year review of Massage Establishments for lawful operation and compliance with conditions of approval.
3. Prohibit the re-establishment of a Massage Establishment in the same location that was closed due to Planning, Health or other Code violations for three years.
4. Allow existing Massage Establishments to continue in operation while they secure land use approvals.
5. Exempt Sole Practitioner Massage Establishments with only one Sole Practitioner from the Conditional Use Authorization requirement.
6. Reconcile the proposed Ordinance with recent changes to Article 2.

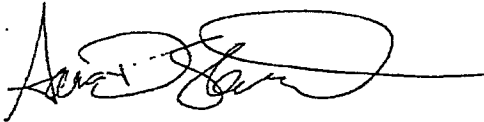
7. Add a finding to explore an expedited Conditional Use Authorization process for small businesses.

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15061(b)(3) and 15308.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Planning Commission.

Please find attached documents relating to the actions of the Planning Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc:

Andrea Ruiz-Esquide, Deputy City Attorney
Dyana Quizon, Aide to Supervisor Tang
Andrea Ausberry, Board of Supervisors

Attachments:

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution 19344

HEARING DATE MARCH 26, 2015

Project Name: Massage Establishments
Case Number: 2015-000709PCA [Board File No. 141303]
Initiated by: Supervisor Tang / Introduced December 16, 2014
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTIONS 218.1, 790.60, 790.114, 890.60 AND 890.114 TO REQUIRE THAT MASSAGE ESTABLISHMENTS, AS DEFINED, OBTAIN CONDITIONAL USE AUTHORIZATION, LISTING EXCEPTIONS TO THAT REQUIREMENTS; TO REQUIRE ALL NEW AND EXISTING MASSAGE ESTABLISHMENTS TO SECURE A PUBLICALLY NOTICED PERMIT THROUGH THE DEPARTMENT OF PUBLIC HEALTH; TO REQUIRE A THREE YEAR REVIEW OF MASSAGE ESTABLISHMENTS FOR LAWFUL OPERATION AND COMPLIANCE WITH CONDITIONS OF APPROVAL; TO PROHIBIT THE RE-ESTABLISHMENT OF A MASSAGE ESTABLISHMENT IN THE SAME LOCATION THAT WAS CLOSED DUE TO PLANNING, HEALTH OR OTHER CODE VIOLATIONS FOR THREE YEARS; TO ALLOW EXISTING MASSAGE ESTABLISHMENTS TO CONTINUE IN OPERATION WHILE THEY SECURE LAND USE APPROVALS; TO EXEMPT SOLE PRACTITIONER MASSAGE ESTABLISHMENTS FROM THE CONDITIONAL USE AUTHORIZATION REQUIREMENT; TO RECONCILE THE PROPOSED ORDINANCE WITH RECENT CHANGES TO ARTICLE 2; TO ADD A FINDING TO EXPLORE AN EXPEDITED CONDITIONAL USE AUTHORIZATION PROCESS FOR SMALL BUSINESSES; AND ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on December 16, 2014, Supervisors Tang introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 141303, which would amend Planning Code Sections 218.1, 790.60, 790.114, 890.60 and 890.114 to require that massage establishments, as defined, obtain Conditional Use authorization and listing exceptions to that requirement; to require all new and existing massage establishments to secure a publically noticed permit through the Department of Public Health; to require a three year review of massage establishments for lawful operation and compliance with conditions of approval; to prohibit the re-establishment of a massage establishment in the same location that was closed due to Planning, Health or other Code violation for three years; to allow existing massage establishments to continue in operation while they secure land use approvals; to exempt sole practitioner massage establishments from the Conditional Use Authorization requirement; to reconcile the proposed

Ordinance with recent changes to Article 2; to add a finding to explore an expedited Conditional Use Authorization process for small businesses; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 26, 2015; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15060(c)(2) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors approve, with modification, the proposed ordinance.

The Commission recommended modifications are:

1. Require all new and existing Massage Establishments to secure a permit through the Department of Public Health (DPH). The permitting process should be publically noticed, if possible.
2. Require a three year review of Massage Establishments for lawful operation and compliance with conditions of approval.
3. Prohibit the re-establishment of a Massage Establishment in the same location that was closed due to Planning, Health or other Code violations for three years.
4. Allow existing Massage Establishments to continue in operation while they secure land use approvals.
5. Exempt Sole Practitioner Massage Establishments from the Conditional Use Authorization requirement.
6. Reconcile the proposed Ordinance with recent changes to Article 2.
7. Add a finding to explore an expedited Conditional Use Authorization process for small businesses.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. Since 2008 California State law effectively preempted local jurisdictions from utilizing land use and zoning controls to regulate the location and concentration of massage establishments.
2. As a result of the absence of local regulation on massage establishment location, San Francisco experienced a significant increase in the number of massage establishments in specific neighborhoods.
3. Overconcentration of any one use in a neighborhood can have potentially negative effects upon the neighborhood's well-being and allure.
4. California State law adopted in 2014 now allows local jurisdictions to exercise land use and zoning controls in their regulation of massage establishments.
5. The Conditional Use authorization requirement will provide the City with an effective means to regulate the location and operation of massage establishments. This will also help address concerns around neighborhood vitality and economic diversity.
6. It is also recognized that, given the length of time required to secure Conditional Use authorization, an expedited Conditional Use authorization process for small businesses should be explored.
7. **General Plan Compliance.** The proposed amendments to the Planning Code are not addressed in the General Plan; the Commission finds that the proposed Ordinance is not inconsistent with the Objectives and Policies of the General Plan.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

Policy 1.2

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The Conditional Use authorization requirement for new massage establishments will help encourage those operators who will provide to the community a valuable, therapeutic service. The conditions of approval

that accompany a Conditional Use authorization will assure that new massage establishments will meet minimum and reasonable performance standards.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

Having a robust, safe and legitimately operating massage therapy sector contributes to a favorable social and cultural climate in the City. This enhances the City's attractiveness as a firm location. The Conditional Use authorization requirement will assist in maintaining the message therapy in this state.

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The Conditional Use authorization process will facilitate community serving massage therapy establishments to locate in the City's neighborhood commercial districts while filtering out those establishments that provide no benefits to the community.

8. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on existing neighborhood serving retail uses because the Ordinance will require Conditional Use authorization on new retail uses.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would help conserve and protect existing neighborhood character and preserve the economic diversity of San Francisco's neighborhoods by providing the Planning Commission an opportunity to consider the concentration of massage uses within the City's neighborhoods.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing because the Ordinance concerns itself with the regulation of a retail use.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking because the Ordinance concerns itself with the regulation of a retail use.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development because the Ordinance is concerned with the regulation of a retail use. The proposed Ordinance does not have an effect on future opportunities for resident employment or ownership in these sectors.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an effect on City's preparedness against injury and loss of life in an earthquake as the Ordinance is concerned with the regulation of a retail use.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an effect on the City's Landmarks and historic buildings as the Ordinance is concerned with the regulation of a retail use.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an effect on the City's parks and open space and their access to sunlight and vistas as the Ordinance is concerned with the regulation of a retail use.

8. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

Resolution 19344
March 26, 2015

CASE NO. 2015-000709PCA
Massage Establishments

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 26, 2015.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, Johnson, Moore, Richards and Wu

NOES:

ABSENT:

ADOPTED: March 26, 2015



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change HEARING DATE: MARCH 26, 2015

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Project Name: Massage Establishments
Case Number: 2015-000709PCA [Board File No. 141303]
Initiated by: Supervisor Tang / Introduced December 16, 2014
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: Recommend Approval

PLANNING CODE AMENDMENT

The proposed Ordinance would amend (1) Planning Code Sections 218.1, 790.60 and 890.60 to eliminate the exception from Conditional Use authorization requirement for California State certified massage establishments; (2) Planning Code Sections 218.1, 790.60 and 890.60 to prohibit for one year the re-establishment of a massage use at a location that had been closed for Planning, Health or other Code violations; and (3) Planning Code Sections 790.114 and 890.114 to eliminate California State certified massage establishments from the definition of a Medical Service use.

The Way It Is Now:

1. The Planning Code generally requires Conditional Use authorization for massage establishments. However it does provide exceptions from this requirement for certain Accessory Use massage, Chair Massage and California State certified massage establishments.
2. The Planning Code does not prohibit the re-establishment of a massage use where one was closed because of Planning, Health or other Code violations.
3. The Planning Code considers a California State certified massage establishment to be a Medical Service use, which generally does not require Conditional Use authorization.

The Way It Would Be:

1. The Planning Code would eliminate the exception from Conditional Use authorization for California State certified establishments.
2. The Planning Code would prohibit the re-establishment of a massage use for one year in the same location where one was closed because of Planning, Health or other Code violations.
3. The Planning Code would no longer consider a California State certified massage establishment to be a Medical Service use.

ISSUES AND CONSIDERATIONS

Local Massage Establishment Controls

Prior to 2004 massage establishments were primarily regulated by the San Francisco Police Department. Massage was thought to be an off-shoot of adult entertainment and, given the nature of the activity, required Police oversight. However by 2003 attitudes in San Francisco around massage changed dramatically. The curative properties of massage therapy were popularly recognized and massage was considered a legitimate healing art.

This shift in perspective was formalized through Ordinance No. 269-03.¹ Effective as of July 2004, Ordinance No. 269-03 gave the Department of Public Health (DPH) permitting authority over massage establishments. This recognized that DPH is better equipped to regulate and enforce health and safety standards for massage than the Police Department.

In 2004, Planning Code requirements for massage establishments varied across the City. In certain neighborhoods, including the downtown commercial district and the light industrial districts, massage establishments were principally permitted. In others they either required Conditional Use authorization or were not permitted.

By 2006 the Planning Code controls on massage establishments were standardized across the City.² With the exception of incidental/accessory massage associated with other uses or chair massage, all massage establishment operators were required to secure Conditional Use authorization. From a land use perspective this was beneficial for two reasons. First, the Conditional Use authorization process allows the Planning Department and Planning Commission to analyze and consider the geographic concentration of massage uses on neighborhoods. Second, the conditions of approval required by a Conditional Use authorization greatly assist Planning Department code enforcement efforts.

State Massage Establishment Controls

In 2008 the California State Legislature passed SB-731. This bill established the California Massage Therapy Council (CAMTC), a private non-profit organization with the authority to implement a statewide certification program for massage professionals. CAMTC issues certifications to qualified individual applicants, allowing them to provide massage services for compensation anywhere in California. Local jurisdictions cannot require CAMTC certificate holders to obtain any other license to provide massage for compensation. In terms of land use and zoning controls, SB-731 required local jurisdictions to treat CAMTC certified sole proprietorship massage establishments no different than other professional or personal service businesses.

In response to SB-731 the Planning Code was amended to include CAMTC certified massage establishments as Medical Services.³ Medical Service uses can be approved over the counter without Planning Commission consideration or neighborhood notification in the vast majority of zoning districts.

¹ Board File 030995: <https://sfgov.legistar.com/View.ashx?M=F&ID=26005665&GUID=4DC26B04-364E-4A7B-AEB5-190B271594F3>

² Board File 050176: <https://sfgov.legistar.com/View.ashx?M=F&ID=2593706&GUID=45BDC081-4D0A-4616-A069-A09BEC3403BE>

³ Board File 090402: <https://sfgov.legistar.com/View.ashx?M=F&ID=713562&GUID=EBF2B436-83EE-4E15-9969-6E22AC3904F7>

Given this less rigorous land use permitting process, the number of CAMTC certified massage establishment has grown to comprise a significant portion of all massage establishments in San Francisco. According to a 2013 DPH analysis, of the 154 active DPH permitted massage establishments, 62 (40%) were CAMTC certified.⁴ In 2015, DPH found that 90 (62%) of the 146 active DPH permitted massage establishments were CAMTC certified.⁵

In conjunction with this growth, DPH reports that massage establishments are geographically concentrated in a half dozen of the approximately 35 larger neighborhoods in the City. There is also a cluster effect. DPH reported that 84 of the 154 active DPH permitted massage establishments in 2013 were within 1,000 feet of another establishment.

Revisiting State and Local Massage Controls

AB-1147

The inability of local jurisdictions to effectively regulate the proliferation of massage establishments led to the passage of AB-1147. This law, signed by Governor Brown in September 2014, returns certain regulatory powers over operating standards and land use to local agencies. With respect to land use controls, AB-1147 no longer requires San Francisco to consider CAMTC certified establishments as Medical Service uses.

Health Code Amendments and Interim Land Use Controls

As part of the effort to comply with the changes in AB-1147, Supervisor Tang is proposing companion legislation to amend the Health Code.⁶ These amendments would provide DPH with permitting and regulatory authority of all massage establishments in San Francisco. Most importantly, these amendments will assist in the safe and legitimate operation of massage uses.

Supervisor Tang also introduced interim land use controls.⁷ The interim controls, effective as of January 20, 2015, require Conditional Use authorization of all massage establishments and medical service uses. This will ensure full consideration by the Planning Commission of new massage establishments until permanent controls are in place.

Planning Department's Enforcement Efforts

The Planning Department's Zoning Compliance division enforces the Planning Code, Conditions of Approval, and works closely with the public and other City agencies, including the Police and Health

⁴Environmental Health Protection, Equity and Sustainability Branch. San Francisco Department of Public Health. Report on Licensing and Regulation of Massage Establishments in San Francisco. 2013.

<https://www.sfdph.org/dph/files/EHSdocs/ehsMassagedocs/massage%20establishment%20report%20140224.pdf>

⁵ Comerford, Cyndy. (February 2014). Presentation given at Health Commission of the City and County of San Francisco. "Massage Establishments in San Francisco: Codification of State Law and Amendments to the SF Health Code." San Francisco, CA.

⁶ Board File 141302: <https://sfgov.legistar.com/View.ashx?M=F&ID=3422068&GUID=7C26BC94-8D3D-491A-BF8A-46B27265ECE7>

⁷ Board File 141231: <https://sfgov.legistar.com/View.ashx?M=F&ID=3453710&GUID=B6B78CCF-72AD-4F66-A7CB-C45CF1C8DEFD>

Departments, to resolve complaints regarding a wide range of illegal uses that also includes the operation of massage establishments.

Although the primary complaint against massage establishments relates to alleged illicit activity, the Planning Department recognized that applying a set of clear and enforceable conditions for massage establishments, i.e., hours of operation, required storefront transparency, and prohibiting locks on interior doors for massage therapy rooms, may deter illegitimate operators from operating.

In addition, the Planning Department believes that having a set of conditions compliments the Health and Police Department tools for monitoring, prevention, and enforcement of illegitimate massage operators.

Forthcoming Substitute Legislation

Supervisor Tang's office intends to introduce a substitute Ordinance that the Planning Department understands will be comprised of two changes to the proposed Ordinance.

Sole Practitioner Massage Establishments

The first is an exemption from the Conditional Use authorization requirement for "Sole Practitioner Massage Establishments." The companion legislation amending the Health Code will define a "Sole Practitioner Massage Establishment" as a fixed place of business solely owned by a DPH or CAMTC certified practitioner for the purposes of providing massage for compensation. This fixed location may be shared with up to *four* other certified practitioners.

Amnesty Program

The second change is to create an amnesty program for existing massage establishments that are operating without proper land use approvals. Conversations with the massage practitioner community indicate that there are dozens of existing massage establishments that do not have land use approvals for their physical site. The Supervisor is sympathetic to this issue given the lack of clarity from the State on required local permits under the CAMTC process.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval* of the proposed Ordinance as currently drafted, and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Department supports the proposed Ordinance as currently drafted because it reinstates local land use controls over a retail use that can have negative effects when it is disproportionately concentrated in a neighborhood. It also standardizes the definition of a massage establishment by removing the differentiation between a State certified massage establishment and City certified massage establishments, reducing confusion around the City's land use regulations. The requirement of Conditional Use authorization is common for many retail uses, including restaurants and certain automotive uses, and

should not be considered unusual or burdensome. Further, establishing uniform controls for massage uses creates certainty in the permitting process and eliminates any duplicative or parallel processes.

Conditional Use Authorization Requirement

The Conditional Use authorization process is beneficial for a number of reasons. The public nature of the process, including the neighborhood notice and hearing, allows community serving operators to shine. It also serves to filter less scrupulous proposals. Under the Conditional Use authorization process the Planning Commission is required to find the proposal necessary or desirable for, and compatible with, the surrounding community. It is believed that legitimate operators, sensitive to their surrounding community, will easily meet this requirement.

When granting Conditional Use authorization, the Planning Commission applies conditions of approval on the proposed use. These conditions are standard for all uses and help provide harmonious operation. Planning Code Section 303 also provides additional conditions for massage uses. These additional conditions include storefront transparency and having good standing with DPH. Together these conditions ensure safe and legitimate operation and assist enforcement efforts given the revocability of a Conditional Use authorization.

Re-Establishment Prohibition

Prohibiting a new massage establishment from being approved for one year at a site where violations have occurred is an important regulatory addition. DPH reports that it is common for an establishment closed due to code violations to re-open at the same location but under a different name and/or business license.⁸ The one year prohibition puts operators on notice regarding the need to adhere to regulatory codes and terminates operation for an economically significant period of time.

Supervisor Tang's Proposed Amendments

The Planning Department recognizes the value of permitting processes that are not undesirably restrictive or onerous. It is also aware of the need to regulate similar retail uses having a similar land use impact in the same manner. The Planning Department sees the need to regulate new massage establishments in the same manner, irrespective of the ownership structure, given their similar land use impacts, and, as mentioned above, does not believe that the Conditional Use authorization process to be unusual or burdensome. The Planning Department is also aware of the confusion around permitting processes, especially when the State provides a parallel route. In this context, the Planning Department is open to the concept of an "amnesty" program for particular massage establishments.

Sole Practitioner Massage Establishments

There are concerns with exempting the Sole Practitioner Massage Establishment use from the Conditional Use authorization process. First the City loses its ability through the Planning process to weigh in on neighborhood concentration issues. This was one reason to return land use controls to local jurisdictions. Second, the exemption also creates an incentive to represent one's practice as a "Sole Practitioner Massage Establishment" given the relaxed land use approval process. It is unclear that a "Sole Practitioner

⁸ Environmental Health Protection, Equity and Sustainability Branch. San Francisco Department of Public Health. Report on Licensing and Regulation of Massage Establishments in San Francisco. 2013.

Massage Establishment" has a lesser land use impact than a standard massage establishment. Third, the lack of a Conditional Use authorization prevents the Planning Commission from applying standard conditions of approval on operators. These conditions of approval often serve as a means to shut down illicit operators and their absence will complicate Planning Department enforcement efforts.

Amnesty Program

The Planning Department believes it is important to create routes for businesses to legalize, particularly in the context of an unclear and duplicative permitting process. However, going forward all massage uses should require the same permitting process given their similar land use impact. The Planning Department would be open to an amnesty program with the following elements:

1. Allow establishments that exclusively employ CAMTC therapists and/or DPH certified practitioners without land use approvals to legalize as a Medical Service (PCSS 790.114, 890.114);
2. The specific route for such legalization process would be dependent upon zoning controls where the establishment is located at the time of application;
3. Allow establishments to continue in operation while securing land use approvals;
4. Participation in the "Amnesty" program is dependent upon the massage establishment having the following:
 - a. A valid business license prior to January 1, 2015;
 - b. A valid CAMTC or DPH certification/practitioner permit prior to January 1, 2015;
 - c. Has been functioning in the space in question before January 1, 2015;
 - d. No open DPH, Police Department or Planning enforcement cases at time of permit approval;
and
 - e. Started the DPH permitting process for their site.
5. The "Amnesty" program would sunset within 18 months of the effective date of the Ordinance (BF 141303);
6. An outreach effort about the amnesty program should be conducted with the help of organized massage industry advocates, including the San Francisco Massage Ordinance Advisory Committee.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Sections 218.1, 303, 790.60, 790.114, 890.60 and 890.114 would result in no physical change in the environment. It is thus not defined as a "project" under California Public Resources Code Section 21065 and CEQA Guidelines Section 15378, and is not subject to CEQA under CEQA Guidelines Section 15060(c).

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment in regard to the proposed Ordinance.

RECOMMENDATION: Recommendation of Approval with Modification

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 141303

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

April 30, 2015

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On April 28, 2015, Supervisor Tang introduced the following legislation:

File No. 141303

Ordinance amending the Planning Code to require that massage establishments, with certain exceptions, obtain a Conditional Use permit; to establish a legitimization program for certain massage establishments; to make conforming amendments; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings, including findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A Ausberry".

By: Andrea Ausberry, Assistant Clerk
Land Use and Transportation Committee

c: John Rahaim, Director of Planning
Aaron Starr, Acting Manager of Legislative Affairs
AnMarie Rodgers, Senior Policy Manager
Scott Sanchez, Zoning Administrator
Sarah Jones, Chief, Major Environmental Analysis
Jeanie Poling, Environmental Planning
Joy Navarrete, Environmental Planning 172



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

May 1, 2015

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: File BOS File No. 141303 [Planning Code – Massage Establishments]

Small Business Commission Recommendation: Final action to be taken on May 11, 2015 for the substituted legislation.

Dear Ms. Calvillo:

On March 23, 2015, the Small Business Commission voted unanimously 7-0 not to approve the first version of BOS File No. 141303 and instead recommended to amend the legislation. The substituted legislation does include recommendations of the Small Business Commission (SBC). While proposed amendments were presented to the SBC on April 27, 2015, the SBC preferred to take final action once it is able to review the actual substituted legislation with amendments.

The SBC is very concern about the application of the CU for newly opening businesses due to the length and time it takes for small business to get through the CU process. The SBC questions whether the CU will provide the tool is believed to have in stopping illicit establishments from opening. The CU process is such a cost prohibitive process for the City's middle class businesses, which the true healthcare massage practitioners are. The SBC recommends that DPH and Planning allow for businesses where massage is an accessory use to open and operate the other aspects of the business while the business has to go through the CU process.

The Small Business Commission has had extensive conversation on this matter and while final action has not been taken changes in the substitute legislation noted below meet I am able to report on the changes as to whether they are meeting the direction the SBC provided in its hearings.

1. Create exemption for Sole Practitioner Massage Establishments from the Conditional Use authorization requirement.
 - *The SBC comments supported the exemption of conditional use for the definition of Sole Practitioner Massage Establishment as defined in the Health Code.*



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

2. Extend length of time that must pass before a massage establishment can open in a location where a massage establishment has been closed for violations of any law from one year to three years.
 - *The SBC comments supported the extended time from one to three years.*
3. Create a time-limited legitimization program under Planning Department that allows existing Massage Establishments that have operated without required permits to seek those permits and continue to operate without obtaining a Conditional Use authorization. The amnesty program includes the following requirements:
 - o Establishment was operating or functioning in that location as of January 19, 2015;
 - o Establishment obtained a business license from the City prior to January 19, 2015;
 - o All employees obtained valid certifications from CAMTC or valid permits from the Department of Public Health (DPH) prior to January 19, 2015;
 - o There are no open Police Department, Planning Department or Health Department enforcement cases against the Massage Establishment at the time of permit approval;
 - o The Massage Establishment applies for a permit from DPH under Section 29.25 of the Health Code within 90 days of the effective date of this Section.
 - o Program to sunset 18 months after the effective date of the ordinance.
 - *The SBC comments strongly supported the need to develop an amnesty program with particular attention to businesses and establishments located in a zoning district where massage is not permitted.*

The SBC comments questioned the need for a blanket citywide condition use for massage establishments and offices such as Chiropractic and Acupuncture where massage is an accessory use. The Small Business Commission (SBC) has determined that massage healthcare practitioners is a profession that should be elevated and included with other like professions, such as physical therapy, acupuncture, chiropractic, and other non-massage healing arts, that clearly elevates them to healthcare industry and stature and distinguishes them from the from the consensual sex industry and non-consensual sex trafficking industry. The SBC understands that this does not provide for blanket exemption from a CU but there are fewer zoning areas that restrict or require CU for medical services.

Since the passage of AB 731 there have been two essential loopholes that have allow for the proliferation of illicit operations to exist under the guise of a legitimate massage establishments.

1. AB731 did not establish an authorizing agency to issue a permit to operate and require it for establishments or for the means of a local or state entity to conduct health and safety inspections for establishments that have only CAMTC certified massage healthcare professionals. This created a Wild West type of environment for illicit operators to open under the guise of massage establishment. Establishing a permit to operate is fundamentally be the most important change of the two pieces of legislation and is the strongest tool DPH needs to close illicit operations. DPH has the authorization to close



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

restaurants that have opened without a conditional use therefore it can do the same for massage establishments.

2. An individual is able obtain a massage practitioner permit with only 100 hours of massage instruction for a general practitioner permit and 200 hours for an advanced practitioner permit. Since the passage of AB731, the Department of Public health could have raised bar for the number of hours to qualify as a general or advanced DPH practitioner permit to match California Massage Therapy Council's (CAMTC) requirement qualify for certification and the massage schools requirement to 500 hours to graduate.

The passage of AB1127 now creates a means for local government to required permit to operate and conduct health and safety inspections for establishments that have CAMTC only certified massage healthcare practitioners. The establishment permits is where the greatest means of enforcement will lies.

The Small Business Commission comments have also noted that the City needs to do:

Real-time Tracking:

In addition to performing a summary analysis in three years, both DPH and Planning should maintain a real-time list of businesses affected the new approval and permitting process. Planning should track how many businesses are required to go through the CU process, and how many are forced to close or relocate. Solo practitioner exemptions should also be tracked. The number of illegitimate businesses closed as a result of the new process should also be tracked to monitor the desired outcome of this legislation. The tracking results should be made available for periodic review.

Recognize CMTs and CMPs as healthcare professionals:

The SBC does recommendation that the City and County of SF officially support the need to recognize Certified Massage Therapists (CMTs) and Certified Massage Practitioner (CMPs) as health care providers and treat them on par with similar health care professionals in the massage ordinance. The SBC also acknowledges that it would be beneficial for the massage therapist industry to continue to lobby at the State level to be classified as Health Care Practitioners under the California Business and Professionals Code Division 2.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Barbara A. Garcia, Director, Department of Public Health

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Transportation Committee,
Board of Supervisors

DATE: April 30, 2015

SUBJECT: SUBSTITUTED LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Tang on April 28, 2015:

File No. 141303

Ordinance amending the Planning Code to require that massage establishments, with certain exceptions, obtain a Conditional Use permit; to establish a legitimization program for certain massage establishments; to make conforming amendments; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings, including findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Cc: Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

January 12, 2015

File No. 141303

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On December 16, 2014, Supervisor Tang introduced the following legislation:

File No. 141303

Ordinance amending the Planning Code to require that massage establishments, as defined, obtain a Conditional Use permit; listing exceptions to that requirement; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Andrea Ausberry".

By: Andrea Ausberry, Assistant Clerk
Land Use & Economic Development Committee

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org, c=US
Date: 2015.01.23 14:18:52 -08'00'

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Barbara A. Garcia, Director, Department of Public Health

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Economic Development
Committee, Board of Supervisors

DATE: January 15, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Tang on December 16, 2014:

File No. 141303

Ordinance amending the Planning Code to require that massage establishments, as defined, obtain a Conditional Use permit; listing exceptions to that requirement; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

January 12, 2015

File No. 141303

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On December 16, 2014, Supervisor Tang introduced the following legislation:

File No. 141303

Ordinance amending the Planning Code to require that massage establishments, as defined, obtain a Conditional Use permit; listing exceptions to that requirement; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

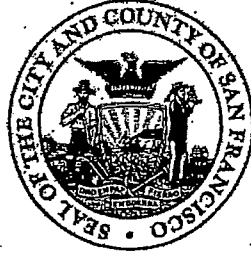
A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk
Land Use & Economic Development Committee

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

January 12, 2015

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On December 16, 2014, Supervisor Tang introduced the following legislation:

File No. 141303

Ordinance amending the Planning Code to require that massage establishments, as defined, obtain a Conditional Use permit; listing exceptions to that requirement; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use and Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

By: Andrea Ausberry, Assistant Clerk
Land Use and Economic Development Committee

c: John Rahaim, Director of Planning
Aaron Starr, Acting Manager of Legislative Affairs
AnMarie Rodgers, Senior Policy Manager
Scott Sanchez, Zoning Administrator
Sarah Jones, Chief, Major Environmental Analysis
Jeanie Poling, Environmental Planning
Joy Navarrete, Environmental Planning

Ausberry, Andrea

From: Quizon, Dyanna (BOS)
Sent: Thursday, April 30, 2015 1:55 PM
To: Ausberry, Andrea
Subject: FW: illegal massage parlors

Dyanna Quizon, Legislative Aide
Office of Supervisor Katy Tang
Phone: 415-554-7460

From: Brian Veit [<mailto:veit@seal-rock.com>]
Sent: Thursday, April 16, 2015 6:34 PM
To: Kim, Jane (BOS); Wiener, Scott; Cohen, Malia (BOS); Ausberry, Andrea
Cc: Quizon, Dyanna (BOS); Tang, Katy (BOS); Jane Manning
Subject: illegal massage parlors

I want to support the proposed legislation making it more difficult to hide illegal prostitution behind massage parlor facades.

in a neighborhood watch captain, and one establishment, "JJ's" at 3800 Noriega at 46th and Noriega, regularly gets a lot of complaints. It is totally illegitimate and is a blight on our community. I am not addressing the morality, just the reality. It doesn't belong, especially given that it is in line with a burgeoning retail renaissance, and only half a block from the nearby school "Noriega Preschool". Yet it is virtually impossible to get rid of now that it's there.

Making it harder to begin with is not a complete solution but it's a good start. Please support this legislation, Files 141302 and 141303.

Thank you,

Brian Veit

1 Letterman Dr Bldg C Main Floor Ste CM400, San Francisco CA 94129

Cell: 415-672-2485

veit@seal-rock.com



Ausberry, Andrea

From: irene crescio [iac349@aol.com]
Sent: Monday, May 04, 2015 1:06 PM
To: Wiener, Scott; Cohen, Malia (BOS); Kim, Jane (BOS); Ausberry, Andrea
Subject: Fwd: Files 141302 and 141303

Good Afternoon,

correction: the massage parlor address in question is not 2809 San Bruno Avenue, but 2633 San Bruno Avenue.

Sincerely,

Irene Crescio

-----Original Message-----

From: irene crescio <iac349@aol.com>
To: Scott.Wiener <Scott.Wiener@sfgov.org>; malia.cohen <malia.cohen@sfgov.org>; jane.kim <jane.kim@sfgov.org>; andrea.ausberry <andrea.ausberry@sfgov.org>
Sent: Sun, May 3, 2015 4:23 pm
Subject: Files 141302 and 141303

Good afternoon,

I am writing to give my support to Files 141302 and 141303 returning land use and regulatory controls over massage establishments to the city's jurisdiction. I reviewed the updated legislation and hope that these changes will help close all massage parlors that continue to have prostitution and human trafficking.

There was one sentence in the updated legislation that stated "Ensure that health and sanitation requirements are in conformity with the actual practice of massage".

I did not see any indication where Health Inspectors can make unexpected periodical visits to these establishments.

For sometime now, we have been aware of one massage parlor at 2809 San Bruno Avenue in the Portola District that is known for having prostitution and human trafficking. They have had two public hearing, but each time nothing is done except the owner and the girls were fined. We almost had this establishment closed on the second public hearing, but when we were in attendance, it turned out that the original owner transferred the business to another owner. Consequently, we are back to square one and the girls are still working.

Sincerely,

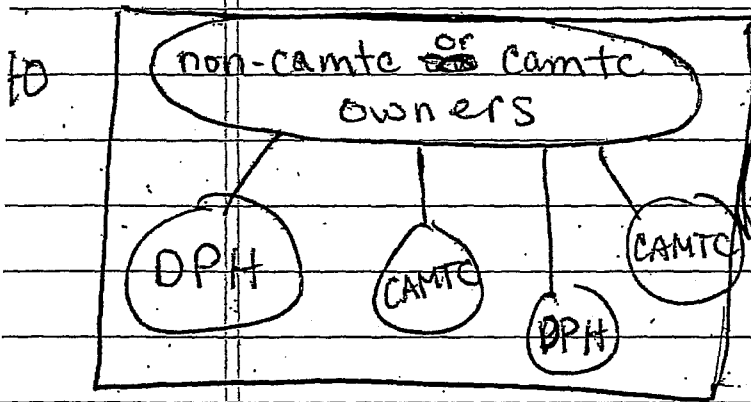
Irene Crescio, Board Member
Portola Neighborhood Association (PNA)

Provider by Stacey DeGooyer, staceydegooyer@141302@gmail.com 141303

Message Businesses

Message Providers

General Massage Establishment

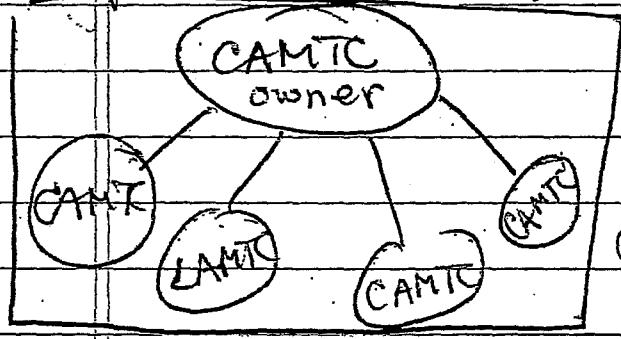


proposed \$681/\$1214
currently \$658/\$1173

DPH \$146/\$123
General Practitioner
100 hours

DPH
Advanced Practitioners
200 hours

Declaration of Exemption" → Certified Establishment



suggested same fee as General Massage Establishment

DPH Practitioner
500 hours

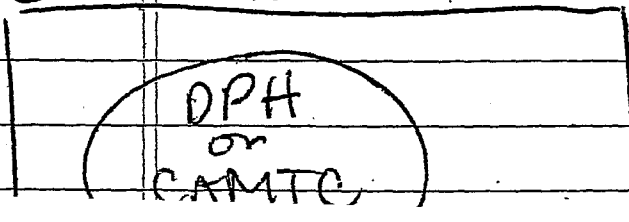
Sole Practitioner (Solo (fixed) / Outcall Establishment)



\$497/\$599
(currently \$480/\$579)

CAMTC
Certified Massage Therapist
500 hours "CMT"

Outcall



\$351/\$306
(currently \$339/\$296)

CAMTC
Certified Massage Practitioner
"CMP"

April 17, 2015

Supervisors Malia Cohen, Supervisor Jane Kim & Supervisor Scott Weiner
City of San Francisco
Board of Supervisors
Land Use & Transportation Committee

RE: Letter of Support - Files 141302 & 141303

On behalf of the board of the Portola Neighborhood Association (PNA), I would like to express our full support for files 141302 and 141303 pertaining to legislation returning land use and regulatory controls over massage establishments to the city's jurisdiction.

Since 2002, members of the PNA have been working tirelessly to revitalize the San Bruno Avenue Corridor, to make it a clean, safe and family-oriented commercial area for everyone to enjoy. Since we first learnt of state legislation AB1147 from Supervisor Katy Tang's office in 2014, the PNA has been in full support of the two major components of that legislation that i) requiring all massage establishments to obtain a Department of Public Health establishment permit and ii) for all new massage establishments to require Conditional Use approval from the City's Planning Department.

Over the last several years, our neighborhood has experienced noticeable increase in illegal activities at massage parlors on San Bruno Avenue. These establishments, following complaints filed by residents, have faced multiple fines for employing unlicensed massage practitioners and non-compliance to health regulations; however, they remain in operations despite those violations. Having this authority returned to local governments will not only deprive operators of illegitimate businesses under the auspices of massage therapy from engaging in prostitution and human trafficking.

Furthermore, during the same period, the lack of proper land use controls to stem the growth of illegitimate massage practices have resulted in a proliferation of these shadowy businesses. On more than one occasion, we have heard from our business community that prospective massage business owners were offering large sums of cash to acquire family-owned retail businesses. Since the illegitimate massage businesses are lucrative as they generally require little operations costs and often avoid paying taxes, they can support much higher rent than the average family-owned community-serving retail business, forcing upward pressure in the commercial rents and destabilizing our family-owned business community.

The Portola neighborhood, like many other neighborhoods in San Francisco, currently faces the challenge of being unable to prevent the opening of illegitimate massage parlors under current regulatory controls. By returning these controls to the City of San Francisco, it simply ensures that similar safeguards that is already in place for business types such as restaurants, bars and marijuana dispensaries.

We hope the committee can provide unanimous support to this legislation and help empower our neighborhood.



Jack Tse
Corridor Manager
Portola Neighborhood Association (PNA)

Ausberry, Andrea

From: tamara poole [tpoole94122@gmail.com]
Sent: Friday, April 17, 2015 4:42 PM
To: Ausberry, Andrea
Subject: Legislation on Massage Parlors

Please do everything that is possible to pass Supervisor Tang's legislation to make it harder to operate Massage Parlors in the Sunset. It would certainly help curb human trafficking.

Thank you.

Tamara Poole

Ausberry, Andrea

From: Vi Huynh [vhuynhsfsu@yahoo.com]
Sent: Thursday, April 16, 2015 11:18 PM
To: Cohen, Malia (BOS)
Cc: Tang, Katy (BOS); Quizon, Dyanna (BOS); Ausberry, Andrea
Subject: FILE No. 141302 and 141303

Dear Supervisor Cohen:

The lack of local regulation has allowed the number of massage establishments to open in San Francisco at an alarming rate. I'm writing to express my support for the legislation District Supervisor Katy Tang has introduced – FILE No. 141302 and 141303 – Health Code - Massage Practitioners, Establishments, and Associated Fees. For instance, if enacted, this legislation would enable the City to deny massage establishment permits to applicants who have been convicted of or are currently charged with criminal acts related to human trafficking.

In essence, the legislation introduced by Supervisor Tang would enable San Francisco to exercise its authority under Assembly Bill 1147 (AB 1147), passed by the Legislature and signed by Governor Brown in 2014. AB 1147 authorizes local governments to use their regulatory and land use authority to ensure the public's *safety, reduce human trafficking, and enforce local standards* for the operation of the business of massage therapy in the best interests of the affected community. Under this AB 1147, San Francisco can regain broad control over its ability to regulate establishments that provide massage services.

The lack of local regulation has allowed many of these massage establishments to open under the guise of being "health clubs." While in reality, some of these "health clubs" are actually commercial front brothels claim to specialize in Asian techniques by pretending to offer legitimate services such as massages and acupuncture – they are actually providing commercial sex. The victims are often Asian women, both documented and undocumented. Not to mention, these massage establishments are harmful to the health and safety of the community and adversely impact the local economy by driving legitimate businesses away.

While human trafficking may be difficult to spot in the open, there are some tell-tale signs of massage parlors engaging in human trafficking. Some of the signs are: suggestive or obvious sexual advertising – darkened-tinted, obstructed, or covered windows – customers coming and going at odd hours – clientele are mostly male – services are performed by Asian women, predominantly Chinese, Vietnamese, Thai, Korean and other Asian ethnic women. The truth is, these businesses are predominantly outlets for the sex trade, and some engage in human trafficking and other human rights violations. Buying sex from another person dehumanizes the victim because it puts a price on a person's self-worth.

To ensure the public's safety and to reduce human trafficking, I urge you to do the right thing and support Supervisor Tang's legislation - Files No. 141302 and 141303 - Health Code - Massage Practitioners, Establishments, and Associated Fees. San Francisco should and must exercise its authority under AB 1147 to regulate all massage establishments, including those that employ only CAMTC certified practitioners as well as to regulate those practitioners who do not hold a CAMTC certificate.

I urge you to support this legislation to safeguard the public's health and very importantly, to reduce human trafficking. Our civilized society just cannot turn its back on these victims of human trafficking. To do so is unconscionable! Thank you for taking so much time to consider this important issue.

Sincerely,

Vi Huynh – District 4
Central Sunset Neighborhood Watch
Community Policing Advisory Board

sberry, Andrea

From: Victor Lara [victor8010@sbcglobal.net]
Sent: Thursday, April 16, 2015 3:55 PM
To: Quizon, Dyanna (BOS); jack@portolasf.org; iac349@aol.com
Cc: Wiener, Scott; Cohen, Malia (BOS); Kim, Jane (BOS); Ausberry, Andrea; Tang, Katy (BOS)
Subject: Re: Massage Legislation

Follow Up Flag: Follow up
Flag Status: Completed

Hello,
I strongly support the new legislation reg. Massage Parlors Files #14102 & 14103

Thank you for all your hard work.

Sincerely,
Henni Lara

On Thursday, April 9, 2015 1:21 PM, "Quizon, Dyanna (BOS)" <dyanna.quizon@sfgov.org> wrote:

Good afternoon:

Our office has introduced legislation returning land use and regulatory controls over massage establishments to the city's jurisdiction. The two most significant changes are that all massage establishments will have to have a Department of Public Health establishment permit and all new massage establishments will have to receive Conditional Use approval with certain exceptions. This will allow the City to better regulate massage establishments and allow neighborhood notification and input of their opening.

If you would like to send letters or emails of support for the legislation, please send them to the members of the Land Use & Transportation Committee noting your support of Files 141302 and 141303, preferably by Friday, April 17. You can email the members of the committee directly (and copy Supervisor Tang and me) at:

Supervisor Scott Wiener
Scott.Wiener@sfgov.org

Supervisor Malia Cohen
Malia.Cohen@sfgov.org

Supervisor Jane Kim
Jane.Kim@sfgov.org

Andrea Ausberry (Clerk)
Andrea.Ausberry@sfgov.org

I've attached a summary of our proposed legislation to this email and some information you may want to include.

For the text of the Health Code amendments (File# 141302), visit: <https://sfgov.legistar.com/LegislationDetail.aspx?ID=2103557&GUID=5808A348-212D-42F0-B447-DF4DEDA2C2BA&Options=ID|Text|&Search=141302>

For the text of the Planning Code amendments (File# 141303), visit: <https://sfgov.legistar.com/LegislationDetail.aspx?ID=2103559&GUID=C407BA0A-14E7-4B0A-9F7E-CE2798B304C0&Options=ID|Text|&Search=141303>

Please let me know if you have any additional questions!

Best,
Dyanna

Dyanna Quizon, Legislative Aide
Office of Supervisor Katy Tang
Phone: 415-554-7460

Ausberry, Andrea

From: Brian Veit [veit@seal-rock.com]
Sent: Thursday, April 16, 2015 6:34 PM
To: Kim, Jane (BOS); Wiener, Scott; Cohen, Malia (BOS); Ausberry, Andrea
Cc: Quizon, Dyanna (BOS); Tang, Katy (BOS); Jane Manning
Subject: illegal massage parlors

I want to support the proposed legislation making it more difficult to hide illegal prostitution behind massage parlor facades.

I am a neighborhood watch captain, and one establishment, "JJ's" at 3800 Noriega at 46th and Noriega, regularly gets a lot of complaints. It is totally illegitimate and is a blight on our community. I am not addressing the morality, just the reality. It doesn't belong, especially given that it is in line with a burgeoning retail renaissance, and only half a block from the nearby school "Noriega Preschool". Yet it is virtually impossible to get rid of now that it's there.

Making it harder to begin with is not a complete solution but it's a good start. Please support this legislation, Files 141302 and 141303.

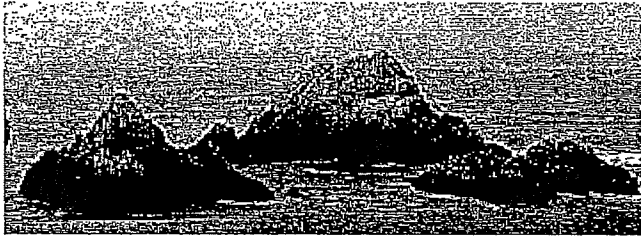
Thank you,

Brian Veit

1 Letterman Dr Bldg C Main Floor Ste CM400, San Francisco CA 94129

Cell: 415-672-2485

veit@seal-rock.com





FIONA MA, CPA
 STATE BOARD OF EQUALIZATION
 MEMBER, SECOND DISTRICT

March 25, 2015

The Honorable Rodney Fong, President
 San Francisco Planning Commission
 1 Dr. Carlton B. Goodlett Place, Rm 400
 San Francisco, CA 94102

RE: Support File #: 141303 Planning Code – Massage Establishments

Dear President Fong:

I am writing in support of amending the Planning Code back to require that massage establishments obtain a Conditional Use permit. This amendment will help ensure that the City can prevent illegal activity without penalizing legally operating establishments.

During my time as Supervisor in 2006, I shaped legislation that required all massage establishments in San Francisco to obtain a permit through the Department of Public Health and conditional use approval through the Planning Department. The Conditional Use Permit process is the highest standard the Planning Department uses in order to grant building and operating permits.

In addition to submitting detailed building plans, businesses are required to hold public meetings and present their plans to the SF Planning Commission for approval. This process also gives the public an opportunity to appeal their concerns to the SF Board of Supervisors.

Conditional Use process is one of the only tools neighborhoods have to keep illicit and unwanted businesses out. According to the Polaris Project, commercial sex networks using massage establishment fronts represents one of the most widespread criminal sex trafficking networks in the United States.

The legislation introduced by Supervisor Tang is a straightforward, direct process, which will help limit the proliferation of businesses dedicated to vice and trafficking of women and children. I support this amendment and urge the Planning Commission to support it as well.

Sincerely,

A handwritten signature in black ink, appearing to read "Fiona Ma".

Fiona Ma, CPA
 Member – District 2
 California State Board of Equalization

cc: Clerk of the Board (to be distributed to all members of Planning Commission)



San Francisco Commission on the Status of Women

Resolution in Support of San Francisco Massage Establishment Ordinances 141302 & 141303

BE IT KNOWN That the Commission on the Status of Women of the City and County of San Francisco hereby issue and authorize the execution, by the subscribing Commissioners, of the following resolution:

WHEREAS, The Department on the Status of Women has focused efforts on responding to modern day slavery since 2008 and now staffs the Mayor's Task Force on Anti-Human Trafficking, convened by Mayor Edwin M. Lee in 2013, including a committee on Illicit Massage Parlors, the target of a national campaign by Polaris which runs the National Human Trafficking Resource Center to address human trafficking occurring in establishments posing as massage parlors; and,

WHEREAS, The Department recognizes that while there are many law abiding massage establishments, the Department of Public Health estimates that 30-50% of massage establishments in San Francisco are fronts for commercial sexual activity and that 1 out of 4 women employed by establishments inspected by the Department of Public Health evidence signs of being trafficked; and,

WHEREAS, Supervisor Katy Tang has provided strong leadership in the effort to eradicate human trafficking from massage establishments.; including contributing to the recent passage of Assembly Bill 1147 that enables local governments to more effectively regulate massage establishments, and gives San Francisco a vital opportunity to prevent and identify trafficking through its regulation and inspections of massage establishments; and,

WHEREAS, Supervisor Tang has introduced two ordinances to amend the Planning Code and the Health Code to strengthen regulations governing massage establishments; and, as part of these amendments, the Department of Public Health is incorporating the innovative use of bilingual health outreach workers into its inspections of massage establishments to provide referrals to women who may be trafficked;

NOW THEREFORE BE IT RESOLVED That the San Francisco Commission on the Status of Women supports the amendments to the Health Code and the Planning Code contained in File numbers 141302 and 141303 as a strategy for eradicating human trafficking from massage establishments in San Francisco.

Nancy Kirshner-Rodriguez
Nancy Kirshner-Rodriguez, President

Andrew Shorter
Andrew Shorter, Vice President

Amy Ackerman
Amy Ackerman

Alicia Gomez
Alicia Gomez

Mary Jung
Mary Jung

Julie D. Soo
Julie D. Soo

San Francisco Commission on the Status of Women

February 25, 2015

Ausberry, Andrea

From: irene crescio [iac349@aol.com]
Sent: Saturday, April 11, 2015 9:38 AM
To: Wiener, Scott; Cohen, Malia (BOS); Kim, Jane (BOS); Ausberry, Andrea
Cc: Tang, Katy (BOS); Quizon, Dyanna (BOS)
Subject: Files 141302 and 141303

To everyone concerned:

I am writing to show my support to the changes being made pertaining to Massage Parlors in Files 14102 and 14103.

This is long overdue, however I would like clarification to the phrase "with certain exceptions." as shown that all new massage establishments will have to receive Conditional Use approval with certain exceptions.

Also, what will happen with Massage Parlors that currently have Human Trafficking? Will they go on with business as usual?

We definitely know of one Massage Parlor located at 2633 San Bruno Avenue in our Portola District that has twice been brought before the Department of Health at a public hearing for unlicensed and uncertified massage practitioners, various sanitary problems and other violations. It is a given that human trafficking is going on at this location and the girls are still at work behind a locked front door that is illegal for a massage parlor.

Some of us here in the Portola District have met with both Katy and Dyanna showing our concern of the increase in massage parlors here in our neighborhood. Two more have opened in the last year, and we are concerned that they to are fronts for prostitution..

Sincerely,

Irene Crescio, Board Member
Portola Neighborhood Association (PNA)

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires".
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [141303]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

Tang

Subject:

Planning Code - Massage Establishments

The text is listed below or attached:

[Empty box for text listing]

Signature of Sponsoring Supervisor: *Tang*

For Clerk's Use Only: