

1 [Interim Zoning Controls - New Massage Establishments]

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3 **Resolution imposing interim zoning controls requiring conditional use authorization for**
4 **any new massage establishments, for eighteen months; and making findings, including**
5 **environmental findings, and findings of consistency with the eight priority policies of**
6 **Planning Code, Section 101.1.**

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8 WHEREAS, Planning Code, Section 306.7 provides for the imposition of interim zoning
9 controls to temporarily suspend the processing of certain applications for land use
10 authorizations which may be in conflict with a contemplated zoning proposal which the City is
11 studying, or intends to study within a reasonable time. This allows time for the orderly
12 completion of a planning study and for the adoption of appropriate legislation, ensuring that
13 the legislative scheme which may be ultimately adopted is not undermined during the planning
14 and legislative process by the approval or issuance of permits or the establishment or change
15 of uses which will conflict with that legislative scheme; and

16 WHEREAS, Under Planning Code, Section 306.7, the Board of Supervisors considers
17 the impact on the public health, safety, peace and general welfare if the proposed controls are
18 not imposed; and

19 WHEREAS, One of the factors that this Board considers is the preservation of
20 neighborhoods and areas of mixed residential and commercial uses, to protect the existing
21 character of such neighborhoods and areas; and

22 WHEREAS, Another factor to be considered is the development and conservation of
23 the commerce and industry of the City, to maintain the economic vitality of the City, provide
24 its citizens with adequate jobs and business opportunities, and maintain adequate services
25 for its residents, visitors, businesses, and institutions; and

1 WHEREAS, In recent years, state law has had a preemptive effect on the ability of
2 cities and counties to use their zoning power to regulate massage establishments; and

3 WHEREAS, The lack of local regulation has led to a marked increase in the number of
4 massage establishments that have opened in San Francisco, especially in some areas of the
5 City that now exhibit a significant concentration of such establishments; and

6 WHEREAS, This increased number of massage establishments and their concentration
7 in some areas appears to negatively affect the character and vitality of the City’s
8 neighborhoods; and

9 WHEREAS, Often the exterior of these massage establishments includes features
10 such as window coverings, locked doors, and video cameras, which are uninviting and have a
11 negative impact on the pedestrian experience and the neighborhood fabric; and

12 WHEREAS, The lack of regulation has allowed many illicit massage establishments to
13 open. These establishments are often involved in or related to criminal acts such as human
14 trafficking, and other human rights violations; and

15 WHEREAS, These illicit massage establishments are detrimental to the health and
16 safety of the community and harm the local economy, as they drive legitimate business away,
17 potentially affecting the vitality of neighborhoods and the provision of adequate services for
18 residents and visitors alike; and

19 WHEREAS, In September 2014, the Legislature passed, and Governor Brown signed,
20 Assembly Bill No. 1147 (“A.B. 1147”), which, among other things, amended state regulation of
21 massage practitioners to remove restrictions on local land use authority and enable local
22 governments to more effectively zone and regulate massage establishments; and

23 WHEREAS, In light of A.B. 1147, the City is studying how to best amend its local laws
24 to regulate massage establishments under the new state law provisions, both to prevent illicit
25 establishments from opening up and operating, and to better ensure that lawful massage

1 establishments develop in harmony with the City’s neighborhoods, character, and commercial
2 base; and

3 WHEREAS, These interim controls are intended and designed to ensure that the City
4 approves no new massage establishments without full consideration by the Planning
5 Commission, as part of a conditional use requirement, while the City is considering how to
6 amend its local laws; and

7 WHEREAS, This Board has considered the impact on the public health, safety, peace,
8 and general welfare if the interim controls proposed herein are not imposed; and

9 WHEREAS, This Board has determined that the public interest will be best served by
10 imposition of these interim controls at this time, to ensure that the planning and legislative
11 scheme which may be ultimately adopted is not undermined during the planning and
12 legislative process for permanent controls; and

13 WHEREAS, The Planning Department has determined that the actions contemplated in
14 this Resolution are in compliance with the California Environmental Quality Act (California
15 Public Resources Code Section 21000 et. seq.). Said determination is on file with the Clerk of
16 the Board of Supervisors in File No. _____ and is incorporated herein by reference; now,
17 therefore, be it

18 RESOLVED, Pursuant to Planning Code Section 306.7, the Board of Supervisors, by
19 this Resolution, hereby prohibits any City agency, board, commission, officer or employee
20 from approving any site permit, building permit, or any other permit or license authorizing the
21 establishment of any new massage establishments, as defined herein, in the City, unless the
22 action would conform both to the existing provisions of the Planning Code and this resolution
23 imposing interim controls; and, be it

24 FURTHER RESOLVED, That for the purpose of these interim controls, “massage” shall
25 mean, as defined in Section 29.1 of the Health Code, “any method of pressure on or friction

1 against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the
2 external soft pads of the body with the hands or with the aid of any mechanical electrical
3 apparatus or appliances, with or without such supplementary aids as rubbing alcohol,
4 liniments, antiseptics, oils, powder, lotions, ointments, or other similar preparations;” and be it

5 FURTHER RESOLVED, That for the purpose of these interim controls, “massage
6 establishment” shall mean, as defined in Section 29.1 of the Health Code, “a fixed place of
7 business where more than one person engages in or carries on, or permits to be engaged in
8 or carried on, the practice of massage;” whether it is categorized as a “massage
9 establishment” (under Sections 218.1, 790.60 and 890.60 of the Planning Code) or as a
10 “medical service” (under Sections 790.14 and 890.14 of such Code); and be it

11 FURTHER RESOLVED, That as of the effective date of this Resolution, the
12 establishment of any massage establishments in the City shall be subject to a conditional use
13 authorization; and, be it

14 FURTHER RESOLVED, That in addition to the criteria listed in Section 303 of the
15 Planning Code, when reviewing a conditional use application for a new massage
16 establishment, the Planning Commission shall consider the concentration of such
17 establishments in the surrounding area and neighborhood; and, be it

18 FURTHER RESOLVED, That any massage establishment lawfully operating prior to
19 the effective date of this Resolution is exempt from these interim controls, unless such
20 enterprise ceases to operate or discontinues operation for 90 days or longer, in which event
21 the use shall be deemed abandoned; and, be it

22 FURTHER RESOLVED, That these interim controls shall not apply to accessory
23 massage uses, provided that the massage use is accessory to a principal use, the massage
24 use is accessed by the principal use, and the principal use is either (a) a tourist hotel, as
25 defined in Section 790.46 of the Planning Code, that contains 100 or more rooms; (b) a large

1 institution as defined in Section 790.50 of the Planning Code; or (c) a hospital or medical
2 center, as defined in Section 790.44 of the Planning Code; and, be it

3 FURTHER RESOLVED, That these interim controls shall remain in effect for eighteen
4 months from the effective date of this Resolution, or until the adoption of permanent legislation
5 regarding regulation of massage establishments in the City, whichever first occurs; and, be it

6 FURTHER RESOLVED, That these interim zoning controls advance and are consistent
7 with Priority Policies established in Planning Code Section 101.1(b), particularly Policies 1
8 and 2, in that they attempt to preserve and enhance the character and vitality of one of the
9 City's neighborhoods. With respect to Priority Policies 3, 4, 5, 6, 7, and 8, the Board finds that
10 these interim zoning controls do not, at this time, have an effect upon, and thus will not conflict
11 with those policies.

12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

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15 By: _____
16 ANDREA RUIZ-ESQUIDE
17 Deputy City Attorney

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