

File No. 151280

Committee Item No. 2

Board Item No. 2

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date May 2, 2016

Board of Supervisors Meeting

Date May 17, 2016

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input checked="" 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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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Memorandum of Understanding (MOU)            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
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OTHER (Use back side if additional space is needed)

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Completed by: Andrea Ausberry Date April 29, 2016

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

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

3 **Ordinance amending the Planning Code to permit accessory massage uses, with a**  
4 **Conditional Use permit, in the North of Market Residential Special Use District;**  
5 **affirming the Planning Department’s determination under the California Environmental**  
6 **Quality Act; and making findings, including findings of public necessity, convenience,**  
7 **and welfare 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 ~~*italics Times New Roman font*~~.  
13 **Board amendment additions** are in double-underlined Arial font.  
14 **Board amendment deletions** are in ~~Arial font~~.  
15 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
16 subsections or parts of tables.

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

18 Section 1. Findings.

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

24 (b) On March 10, 2016, the Planning Commission, in Resolution No. 19587, adopted  
25 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board  
adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
Board of Supervisors in File No. 151280, and is incorporated herein by reference.

1 (c) On March 10, 2016, the Planning Commission, in Resolution No. 19587,  
2 approved this legislation, recommended it for adoption by the Board of Supervisors, and  
3 adopted findings that it will serve the public necessity, convenience, and welfare. Pursuant to  
4 Planning Code Section 302, the Board adopts these findings as its own. A copy of said  
5 Resolution is on file with the Clerk of the Board of Supervisors in File No. 151280, and is  
6 incorporated by reference herein.

7  
8 Section 2. The Planning Code is hereby amended by revising Section 249.5, to read  
9 as follows:

10 **SEC. 249.5. NORTH OF MARKET RESIDENTIAL SPECIAL USE DISTRICT.**

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

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

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

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

5 (2) Notwithstanding the Zoning Control Table for RC Districts found in Section  
6 209.3 of this Code, commercial establishments shall be limited to the ground floor and the first  
7 basement floor, except that such establishments may be permitted on the second story as a  
8 conditional use if authorized pursuant to Section 303 and Section 249.5(c)(1) of this Code.

9 (3) The following uses are not permitted:

10 (A) A Hotel or Motel; and

11 (B) Massage Establishments which are not incidental to Hospitals,  
12 Residential Care Facilities, Health Services, *Personal Services* and Social Service or  
13 Philanthropic Facility uses or are not incidental to a health club, gymnasium or other facility  
14 with a regular membership or other facility which is used primarily for instruction and training  
15 in body building, exercising, reducing, sports, dancing or other similar physical activities. *For*  
16 *those massage establishments incidental to Personal Services, the following shall apply:*

17 (i) the Massage Use shall obtain a Conditional Use Authorization  
18 pursuant to Section 303(n) of this Code;

19 (ii) The Massage Use shall comply with the accessory use provisions  
20 of Section 204.3 of this Code, except that in no case shall the Massage Use occupy more than 1,000  
21 square feet of occupied floor area of the Personal Service use;

22 (iii) The Massage Use must be functionally integrated into the  
23 operation of the Personal Service use and cannot function independently of the Personal Service use,  
24 including having hours of operation that exceed those of the Personal Service use. In no case may the  
25 Massage Use operate during the hours between 10:00 pm and 7:00 am.

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

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

9 (6) Special exceptions to the 80-foot base height limit in height and bulk districts 80-  
10 120-T and 80-130-T may be granted pursuant to the provisions of Section 263.7 of this Code.

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

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

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

19 (10) All demolitions of buildings containing residential units shall be permitted only if  
20 authorized as a conditional use under Section 303 of this Code, unless the Director of the  
21 Department of Building Inspection or the Chief of the Bureau of Fire Prevention and Public  
22 Safety determines that the building is unsafe or dangerous and that demolition is the only  
23 feasible means to secure the public safety. When considering whether to grant a conditional  
24 use permit for the demolition, in lieu of the criteria set forth in Planning Code Section 303(c),  
25 consideration shall be given to the purposes of the North of Market Residential Special Use

1 District set forth in Section 249.5(b), above, to the adverse impact on the public health, safety  
2 and general welfare due to the loss of existing housing stock in the district and to any  
3 unreasonable hardship to the applicant if the permit is denied. Demolition of residential hotel  
4 units shall also comply with the provisions of the Residential Hotel Ordinance.

5 \* \* \* \*

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

11  
12 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
13 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
14 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
15 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
16 additions, and Board amendment deletions in accordance with the "Note" that appears under  
17 the official title of the ordinance.

18  
19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA, City Attorney

21 By:

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

25 n:\egana\as2015\1600213\01085713.docx

**LEGISLATIVE DIGEST**  
**(Substituted 3/1/2016)**

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

**Ordinance amending the Planning Code to permit accessory massage uses, with a Conditional Use permit, in the North of Market Residential Special Use District; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings, including findings of public necessity, convenience, and welfare under Section 302 of the Planning Code, 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 "fixed place[s] of business where more than one individual administers Massage for Compensation, excluding those locations where Massage is provided only on an outcall basis." "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 the external soft pads of the body with the hands or with the aid of any apparatus or appliance." (See Health Code, Section 29.5.)

In June, 2015, the Board of Supervisors passed ordinances Nos. 0072-15 and 0073-15, which updated and standardized the regulation of Massage Establishments in the City. Pursuant to those ordinances, all Massage Establishments in the City require a Conditional Use permit from the Planning Commission, with limited exceptions.

The North of Market SUD was created in 1985, and has been amended several times. Its purpose is "to protect and enhance important housing resources in an area near downtown, conserve and upgrade existing low and moderate income housing stock, preserve buildings of architectural and historic importance and preserve the existing scale of development, maintain sunlight in public spaces, encourage new infill housing at a compatible density, limit the development of tourist hotels and other commercial uses that could adversely impact the residential nature of the area, and limit the number of commercial establishments which are not intended primarily for customers who are residents of the area." (See Planning Code Section 249.5.)

Currently, in the North of Market Residential SUD, Massage Establishments which are "not incidental to Hospitals, Residential Care Facilities, Health Services, and Social Service or Philanthropic Facility uses or are not incidental to a health club, gymnasium or other facility with a regular membership or other facility which is used primarily for instruction and training

in body building, exercising, reducing, sports, dancing or other similar physical activities” are prohibited.

Amendments to Current Law

This Ordinance would amend the North of Market Residential SUD to permit Massage Uses as accessory uses to permitted Personal Service uses, provided that: (1) the Massage Use obtains a Conditional Use Authorization; (2) the Massage Use complies with the accessory use provisions of the Planning Code, and in no case the Massage Use occupy more than 1,000 square feet of occupied floor area of the Personal Service use; and (3) the Massage Use is functionally integrated into the operation of the Personal Service use, and cannot function independently of the Personal Service use, including having hours of operation that exceed those of the Personal Service use. In no case may the Massage Use operate during the hours between 10:00 pm and 7:00 am.

Personal Service uses are currently defined as “Retail Sales and Services Use[s] that provide[] grooming services to the individual, including salons, cosmetic services, tattoo parlors, and health spas, bathhouses, and steam rooms.” (See Planning Code, Section 102.) Under this definition, “Personal Service does not include Massage Establishments or Gym, which are defined separately in this Section.”

If this Ordinance is approved, Personal Services in the North of Market Residential SUD would be allowed to include accessory Massage uses; provided the conditions specified in the Ordinance, listed above, are met.

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# SAN FRANCISCO PLANNING DEPARTMENT

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March 14, 2016

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

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Re: Transmittal of Planning Department Case Number 2015-01826PCA:  
Permitting Accessory Massage Uses with a Conditional Use Permit in the North  
Of Market Residential Special Use District  
Board File No. 151280  
Planning Commission Recommendation: Approval

Dear Ms. Calvillo and Supervisor Kim,

On March 10, 2016, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance that would amend Planning Code Section 249.5, introduced by Supervisor Kim. At the hearing the Planning Commission recommended approval.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr", with a long horizontal line extending to the right.

Aaron D. Starr  
Manager of Legislative Affairs

cc:  
Andrea Ruiz-Esquide, Deputy City Attorney  
April Ang, Aide to Supervisor Kim  
Andrea Ausberry, Office of the Clerk of the Board

**Transmittal Materials**

**CASE NO. 2015-018261PCA  
Permitting Accessory Massage Uses, with a Conditional Use Permit,  
In the North of Market Residential Special Use District**

Attachments :

Planning Commission Resolution  
Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 19587 HEARING DATE MARCH 10, 2016

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CA 94103-2479

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*Project Name:* Permitting Accessory Massage Uses with a Conditional Use Permit in the North of Market Residential Special Use District  
*Case Number:* 2015-018261PCA [Board File No. 151280]  
*Initiated by:* Supervisor Kim / Introduced December 15, 2016  
*Staff Contact:* Diego R Sánchez, Legislative Affairs  
diego.sanchez@sfgov.org, 415-575-9082  
*Reviewed by:* Aaron D Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 249.5 TO PERMIT ACCESSORY MASSAGE USES, WITH CONDITIONAL USE PERMIT, IN THE NORTH OF MARKET RESIDENTIAL SPECIAL USE DISTRICT; 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 15, 2016 Supervisor Kim introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 151280, which would amend Section 249.5 of the Planning Code to permit accessory massage uses, with conditional use permit, in the North of Market Residential Special Use District;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 10, 2016; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c); 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 the proposed ordinance.

## 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. Regulations on massage uses must strike a balance between the need to increase access to massage therapy with the need to equip the City with adequate regulatory tools to assure the safe, legitimate and compatible operation of massage uses.
2. The City can strike that balance between competing needs in two ways. First, by enacting regulations that allow for smaller scaled massage uses to open in areas where they were once largely prohibited. Second, by concurrently requiring a permitting process that is transparent and an approval that is revocable and that applies performance standards to ensure safe operation.
3. Amending the regulations in the North of Market Residential Special Use District to allow accessory massage uses with Conditional Use authorization strikes this balance.
4. **General Plan Compliance.** The proposed Ordinance is consistent with the following 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 proposed Ordinance will facilitate the establishment of a retail use that provides net benefits to its patrons and the neighborhood in general. Any potential undesirable consequences will be addressed through existing regulatory controls, including performance standards, by the Planning and Health Departments.*

### OBJECTIVE 2

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

**Policy 2.1**

Seek to retain existing commercial and industrial activity and to attract new such activity to 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.

*The proposed Ordinance allows new commercial activity in a special use district where it once was largely prohibited. This added commercial activity will help maintain a favorable social and cultural climate in San Francisco as it adds to the number of retail activities available to employees. This enhances San Francisco as a firm location.*

5. **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 will have a beneficial effect on neighborhood serving retail uses as it will allow new commercial uses to locate in the North of Market Residential Special Use District and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

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 will help conserve the existing housing and neighborhood character, thereby preserving the cultural and economic diversity of the City's neighborhoods.*

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

*The proposed Ordinance will not have an adverse effect on the City's supply of affordable housing as it relates only to regulations on non-residential activities.*

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

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking because the Ordinance concerns itself with regulations on a minor, accessory retail activity.*

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 will not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired because the Ordinance will relax regulations on a retail sales and service use within one special use district.*

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

*The proposed Ordinance will not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because the Ordinance modifies regulations on a retail activity.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance will not have an adverse effect on the City's Landmarks and historic buildings because the Ordinance concerns itself with regulating a retail sales and service use category.*

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

*The proposed Ordinance will not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because it concerns the regulation of a retail sales and service use.*

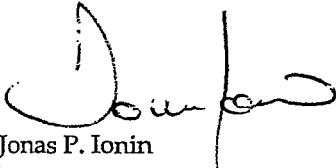
8. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

Resolution No. 19587  
March 10, 2016

CASE NO. 2015-018261PCA  
Permitting Accessory Massage Uses, with a Conditional Use  
Permit, in the North of Market Residential Special Use District

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 10, 2016.



Jonas P. Ionin  
Commission Secretary

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

NOES: None

ABSENT: Commissioner Wu

ADOPTED: March 10, 2016







# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary Planning Code Text Amendment

HEARING DATE: MARCH 10, 2016  
EXPIRATION DATE: MARCH 22, 2016

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San Francisco,  
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*Project Name:* Permitting Accessory Massage Uses, with a Conditional Use Permit, in the North of Market Residential Special Use District  
*Case Number:* 2015-018261PCA [Board File No. 151280]  
*Initiated by:* Supervisor Kim / Introduced December 15, 2016  
*Staff Contact:* Diego R Sánchez, Legislative Affairs  
diego.sanchez@sfgov.org, 415-575-9082  
*Reviewed by:* Aaron D Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362  
*Recommendation:* **Recommend Approval**

### PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 249.5 to permit, with Conditional Use Authorization (CU), massage uses accessory to a Personal Service use in the North of Market Residential Special Use District.

#### The Way It Is Now:

Massage uses are not permitted in the North of Market Residential Special Use District unless they are accessory to the following uses:

- Hospitals
- Residential Care Facilities
- Health Services
- Social Service or Philanthropic Facility uses; and
- health clubs, gymnasiums or other facilities with a regular membership or one which is used primarily for instruction in body building, exercising, reducing sports, dancing or other similar physical activities.

#### The Way It Would Be:

In addition to the uses listed above, massage uses accessory to a Personal Service use would also be permitted, with CU, in the North of Market Residential Special Use District.

### BACKGROUND

#### The North of Market Residential Special Use District

Established in 1985, the North of Market Residential Special Use District (NMRSUD) is within the Tenderloin neighborhood (See Exhibit B: Map of the North of Market Residential Special Use District). This neighborhood, largely zoned RC-4 (Residential-Commercial, High Density), is characterized by buildings with upper story residential uses above commercial uses. The stated purpose of the NMRSUD

is to preserve the residential character of the neighborhood by protecting the existing housing stock and allowing new infill housing at compatible densities. Commercial developments that may adversely affect the residential character are to be limited.

The purpose of the NMRSUD is reflected in the additional controls the NMRSUD establishes. For example, commercial uses are generally limited to the ground floor and the first-basement floor. They may locate on the second floor, but require CU to do so. This is done, in part, to prevent the loss of upper story residential units and to maintain the prevailing character of the neighborhood.

The NMRSUD also regulates the types of commercial uses that may be established. It generally prohibits new off-sale liquor licenses and contains multiple good neighbor policies for those existing off-sale liquor establishments. In the same vein, fringe financial uses are prohibited in the NMRSUD. Massage establishments in the NMRSUD are also strictly regulated as it has been found that they are, at times, used as fronts for illicit activity.<sup>1</sup> Unless they are accessory to institutional uses like hospitals or retail uses focused on physical activities massage uses are prohibited

#### Origins of the Ordinance

The Ordinance originated from a stakeholder request to Supervisor Kim's office requesting a relaxation of the massage controls in the NMRSUD. Staff understands that the stakeholder is establishing a therapeutic health spa in the NMRSUD. Activities will include hot water baths, steam rooms and massage therapy. However, because massage therapy is prohibited when incidental to those activities the stakeholder cannot offer those services. The Ordinance would permit massage therapy incidental to those uses with CU and apply specific operating practices to the massage component.

### ISSUES AND CONSIDERATIONS

#### Use Definitions: Personal Service, Health Service and Massage Establishments

The Planning Code defines a Personal Service use as a use providing grooming services to an individual. Salons, cosmetic services and tattoo parlors fall into this category. The Planning Code also considers retail uses that provide traditional therapeutic treatments, such as bathhouses and steam rooms, as Personal Service uses. The Planning Code distinguishes between these traditional therapeutic uses and health care services provided by professionals licensed by State-sanctioned Boards such as physicians, dentists and psychologists. The Planning Code considers the later as Health Service uses.

The Planning Code also provides a distinct definition for Massage Establishments. This definition relies on Article 29 of the Health Code to define the types and nature of activities that are considered massage. In this definition the Planning Code indicates that CU is required to establish a massage use anywhere in

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<sup>1</sup> "Sex Trafficking." *Polaris Project*. Polaris 2016. Web. 16 February 2016. <https://polarisproject.org/sex-trafficking>; "Hotline Statistics." *National Human Trafficking Resource Center*. Polaris 2016. Web. 16 February 2016. <https://traffickingresourcecenter.org/states/>; 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. <https://www.sfdph.org/dph/files/EHSdocs/ehsMassagedocs/massage%20establishment%20report%20140224.pdf>

the City. However, it also lists a number of massage uses exempted from the CU requirement. These include chair massage completely open to the public view, a Sole Practitioner Massage Establishment, as defined in the Health Code, and massage accessory to large institutions or large tourist hotels.

### Recent Massage Regulation

Regulations for massage uses must strike a balance between two competing goals. The first is to recognize the importance of massage therapy as a healing art and increase its accessibility to those in need of treatment. The second is to equip the City with adequate regulatory tools to assure the safe, legitimate and compatible operation of massage uses.

Over the last decade and a half, the regulatory environment for massage uses has markedly changed, largely influenced by that balancing act. For example, prior to 2004 regulatory authority over massage uses was primarily the domain of the Police Department. This was largely due to the City's view of massage therapy as an off-shoot of adult entertainment.<sup>2</sup> The City signaled a change in its perspective on massage when it entrusted the Department of Public Health (DPH) with permitting authority over massage uses in 2004.<sup>3</sup> By shifting authority to DPH and away from the Police Department, the City acknowledged that massage therapy was unmistakably different from adult entertainment. It also acknowledged DPH's capacity to regulate and enforce the health and safety standards of a therapeutic discipline.

A more recent example of this balancing act is embodied in Supervisor Tang's 2015 Massage Establishments Ordinance.<sup>4</sup> This Ordinance reestablished the CU requirement for most massage uses and required all massage practitioners and establishments to secure licenses from DPH. These requirements afforded a public process to assess necessity and desirability of the massage use and assure neighborhood compatibility given an area's existing retail composition. It also provided an effective enforcement tool given that the authorization is revocable in the event of code violations. Lastly, with the involvement of DPH, additional oversight was provided, thereby further assuring safe and legitimate operations. These enforcement tools are valuable to the effort to prevent the use of massage establishments as fronts for forced labor and prostitution.<sup>5</sup>

At the same time, the Ordinance maintained and expanded upon the breadth of massage uses exempted from the CU requirement. This created a simpler permitting process for smaller scale massage uses. The Ordinance also created an amnesty program for massage establishments that had not secured local land use entitlements. This helped bring massage uses under one local regulatory program.

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<sup>2</sup> The Planning Code considers adult bookstores, adult theaters and encounter studios (establishments providing booths, rooms or stalls wherein an entertainer provides entertainment to patrons or members within the aforesaid booths, rooms or stalls) as adult entertainment uses.

<sup>3</sup> Board File 030995 <https://sfgov.legistar.com/View.ashx?M=F&ID=2600565&GUID=4DC26B04-364E-4A7B-AEB5-190B271594F3>

<sup>4</sup> Board File 141303 <https://sfgov.legistar.com/View.ashx?M=F&ID=3770126&GUID=E2B7CDFC-A9B7-41CA-AAD6-8B1349DD9BB9>

<sup>5</sup> "Sex Trafficking." *Polaris Project*; "Hotline Statistics." *National Human Trafficking Resource Center*.

New massage regulations should follow this pattern of providing new access to massage therapy while affording regulatory agencies the proper tools to assure safe operations and neighborhood compatibility. By doing this, the City facilitates the growth of small business in a manner that balances the needs of all stakeholders.

## IMPLEMENTATION

The Department has determined that this ordinance will not impact our current implementation procedures.

## 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 and adopt the attached Draft Resolution to that effect.

## BASIS FOR RECOMMENDATION

The Department supports the Ordinance because it increases access to a therapeutic service and fosters small business expansion. It also provides the City with adequate regulatory and enforcement mechanisms to assure safe operation and neighborhood compatibility.

### Organization and Consistency of Controls

Locating the proposed new massage regulations in the "Controls" subsection of the NMRSUD eases their implementation and the overall legibility of the NMRSUD. It avoids referencing multiple subsections of the NMRSUD and minimizes missing the new controls. This is contrast to a 2007 Ordinance that added fringe financial controls in its own subsection at the end of the NMRSUD.<sup>6</sup>

The proposed new massage regulations also generally align with existing provisions on accessory uses in the RC districts. The vast majority of properties in the NMRSUD are within the RC-4 zoning district. Planning Code Section 204.3, Accessory Uses for Uses other than Dwellings in C, RC, M and PDR Districts, already regulates accessory uses in the RC-4. Because these regulations exist, it makes sense to require any newly allowed accessory use, including massage uses, to generally conform to these controls.

The proposed new massage regulations also align with the hours of operation in existing Health Code regulations. San Francisco Health Code Section 29.31 regulates the operating practices for massage uses throughout the City. Among those operational practices regulated are the hours of operation. The

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<sup>6</sup>Board File 070671 <https://sfgov.legistar.com/View.ashx?M=F&ID=2593950&GUID=5810D993-093D-4242-AD5D-26C2660672C1>

Health Code expressly prohibits the provision of massage services between the hours of 10:00pm and 7:00am. The Planning Department's standard Conditions of Approval for massage uses also adhere to these restrictions on hours of operation. For consistency's sake, it is reasonable to align the new accessory provisions in the NMRSUD with existing, City-wide regulations on the hours of operation.

Owing to the subordinate and incidental nature of accessory uses, it is important that they are inaccessible to the public when the principal use is closed. If the accessory use remains open beyond the hours of operation of the principal use, the accessory use becomes the primary use of that space. This would be in direct conflict with the Planning Code's intent for accessory uses. The proposed language in the Ordinance that reinforces this relation between accessory and principal use is therefore important and helps clarify this dynamic.

#### Conditional Use Authorization

Maintaining the CU requirement is advantageous or appropriate for a number of reasons. The first is the public nature of the process, including the neighborhood notification and Commission hearing. This process helps to filter less scrupulous or thoughtful proposals. This is especially important in Tenderloin neighborhood, given recent DPH findings of the overlap between massage establishment locations and areas with higher incidences of prostitution related crimes.<sup>7</sup>

The second reason maintaining CU is appropriate is because it is in line with the recent changes to massage regulation and their intentions. Specifically, Supervisor Tang's 2015 Massage Establishments Ordinance reinstated the citywide CU requirement for the majority of massage uses. This ensured that neighborhood concentration and compatibility concerns can be analyzed and discussed in a public forum. This tool can be especially useful in the Tenderloin neighborhood given the stated purpose of the NMRSUD.

Lastly, requiring CU is advantageous and appropriate because of the Conditions of Approval the Planning Commission applies to the authorization. These Conditions set a minimum performance standard, establish a monitoring and enforcement protocol, indicate the revocability of the authorization and require the identification of a community liaison. For massage uses the Conditions of Approval are tailored to assist in the enforcement duties of the Planning Department. They also reiterate that the authorization may be revoked and the establishment closed. This is ultimately the strongest tool the Planning Department has to guarantee safe and legitimate operation of any massage use.

#### ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

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<sup>7</sup> San Francisco Department of Public Health. Report on Licensing and Regulation of Massage Establishments in San Francisco. 2013.

**Executive Summary**  
**Hearing Date: March 10, 2016**

**CASE NO. 2015-018261PCA**  
**Permitting Accessory Massage Uses, with a Conditional Use**  
**Permit, in the North of Market Residential Special Use District**

## **PUBLIC COMMENT**

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

<b>RECOMMENDATION:</b> <b>Recommendation of Approval with Modification</b>
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### **Attachments:**

- Exhibit A:      Draft Planning Commission Resolution
- Exhibit B:      Map of the North of Market Residential Special Use District
- Exhibit C:      Letters of Support
- Exhibit D:      Board of Supervisors File No. 151280

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

March 4, 2016

File No. 151280-2

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Jones:

On March 1, 2016, Supervisor Kim introduced the following **substitute** legislation:

**File No. 151280-2**

Ordinance amending the Planning Code to permit accessory massage uses, with a Conditional Use permit, in the North of Market Residential Special Use District; 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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Somera".

By: Alisa Somera, Assistant Clerk  
Land Use and Transportation Committee

Attachment

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

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

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December 23, 2015

File No. 151280

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Jones:

On December 15, 2015, Supervisor Kim introduced the following legislation:

**File No. 151280**

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

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By: Alisa Somera, Assistant Clerk  
Land Use and Transportation Committee

Attachment

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

Not defined as a project under CEQA 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: 2016.01.28 16:12:06 -08'00'



**Ausberry, Andrea**

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**From:** Bruss, Andrea (BOS)  
**Sent:** Monday, April 18, 2016 3:26 PM  
**To:** onsenspasf@gmail.com  
**Cc:** Ausberry, Andrea; Somera, Alisa (BOS)  
**Subject:** RE: Accessory Massage use in North of Market Special Use District

Caroline –

Thank you for this information. I have copied the committee clerk on this message so your comments can be in the formal legislative file and record. I believe you are referring to File No. 151280 [Planning Code - Permitting Accessory Massage Uses, with a Conditional Use Permit, in the North of Market Residential Special Use District]. We have not received confirmation from Supervisor Kim's office on whether they indeed want this item calendared for April 25<sup>th</sup>, you may want to check in with their office.

Andrea – Can you please add Caroline to the notification list so she is notified when this item is calendared for committee?

Thanks

.....  
**Andrea Bruss**  
Office of Supervisor Malia Cohen  
(415)554-7672

**From:** Caroline.Sunny Smith.Simmons [mailto:onsenspasf@gmail.com]  
**Sent:** Monday, April 18, 2016 11:35 AM  
**To:** Cohen, Malia (BOS) <malia.cohen@sfgov.org>  
**Subject:** Accessory Massage use in North of Market Special Use District

Hello Supervisor Cohen,

My husband, Sunny Simmons, and I are writing to you in regards to the legislation on an accessory Massage use in the North of Market Special Use District that will be coming in front of the Land use committee next Monday, April 25<sup>th</sup>. We have been working for the past two years on converting a 100 year old brick mechanic garage into a Japanese style Spa and Tea Room. We are a small business that hopes to bring a piece of the Japanese bathing culture to the Bay Area.

A little about what we will be offering at our business; We will be serving vegetable driven Japanese inspired dishes and a wide selection of teas sourced both locally and abroad. I am an acupuncturists and herbalist, so I will be excited to offer Herbal tea recipes that focus on their medicinal qualities. We will have 6 treatment rooms for Acupuncture, Reiki, Aromatherapy and hopefully, Massage. In the communal bathing area there will be a 10ft x 10ft soaking pool (made in the space that was formally the mechanics pit), a dry sauna and steam room.

We would like to be able to offer massage at our business because we believe it is a powerful aspect of any well rounded wellness program and a modality that supports the other treatments we have. Our focus in the nassage program, will be on utilizing the benefits of increased circulation, breaking up facial and muscular adhesion and of course, calming the nervous system. All of the practitioners that perform massage will be California Massage Therapy Council certified and will comply with the all the new requirements set out in the Amended Article 26 of the San Francisco Health Code. The legislation coming up before you will still require



our business to go through the Conditional Use process and we would like the opportunity to put this vote in front of the community. We will gladly work with all the city agencies and the residence of the Tenderloin to provide a safe, welcoming environment that will be a positive addition to a neighborhood that sorely needs new business and alternative medicine services.

We feel that our business will be a valued asset to the Tenderloin. We will serve the community by offering free acupuncture to veterans and sliding scale acupuncture to residents. We also plan on setting up a system that would give residents access to massage and Reiki at very affordable pricing. I currently volunteer at Bay Area Veterans Acupuncture Clinic, and we have amazing responses from our patients. The only issue is the clinic is located in Potrero Hill and it is difficult for some of our patients to get there. This will be a non issue when we open for business, because we are located a few blocks from veteran residences and other veteran services.

Thank you for taking the time to read our email. Attached are some photos of the progress we have made in converting the garage into a spa, you can also see what we have been creating on our Instagram handle: onsen.sf . We are also attaching support letters from local business and property owners.

Sincerely,  
Caroline Smith  
Sunny Simmons  
Onsen Holistic Spa and Tea Room  
466 Eddy Street, SF 94109

BOARD of SUPERVISORS



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San Francisco 94102-4689  
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TDD/TTY No. 554-5227

# MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
Small Business Commission, City Hall, Room 448

FROM: *S* Alisa Somera, Assistant Clerk  
Land Use and Transportation Committee

DATE: March 1, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

**File No. 151280-2**

Ordinance amending the Planning Code to permit accessory massage uses, with a Conditional Use permit, in the North of Market Residential Special Use District; 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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

\*\*\*\*\*

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

- No Comment
- Recommendation Attached

\_\_\_\_\_  
Chairperson, Small Business Commission  
68

BOARD of SUPERVISORS



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March 4, 2016

**File No. 151280-2**

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Jones:

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By: Alisa Somera, Assistant Clerk  
Land Use and Transportation Committee

Attachment

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



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March 4, 2016

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

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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 that reads "Alisa Somera".

By: Alisa Somera, Assistant Clerk  
Land Use and Transportation Committee

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

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December 23, 2015

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Planning Department  
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# MEMORANDUM

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Small Business Commission, City Hall, Room 448

FROM: *JS* Alisa Somera, Assistant Clerk  
Land Use and Transportation Committee

DATE: December 23, 2015

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Land Use and Transportation Committee

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\*\*\*\*\*

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

\_\_\_\_\_ No Comment  
\_\_\_\_\_ Recommendation Attached

\_\_\_\_\_  
Chairperson, Small Business Commission

# 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. [ 151280 ]
- 9. Reactivate File No. [ ]
- 10. 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 Form.**

**Sponsor(s):**

Supervisor Kim

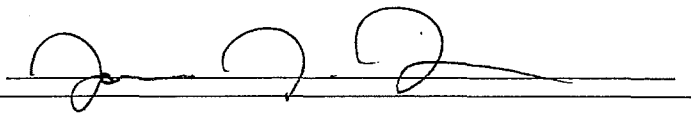
**Subject:**

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

**The text is listed below or attached:**

See attached.

Signature of Sponsoring Supervisor: \_\_\_\_\_



**For Clerk's Use Only:**

