



# SAN FRANCISCO PLANNING DEPARTMENT

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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**

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.**

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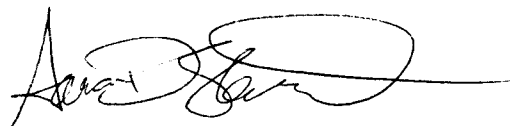
7. Add a finding to explore an expedited Conditional Use Authorization process for small businesses.

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

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## 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.

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

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## Executive Summary Planning Code Text Change

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  
*Recommendation:* **Recommend Approval**

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### 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Medical Service uses can be approved over the counter without Planning Commission consideration or neighborhood notification in the vast majority of zoning districts.

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<sup>1</sup> Board File 030995: <https://sfgov.legistar.com/View.ashx?M=F&ID=2600565&GUID=4DC26B04-364E-4A7B-AEB5-190B271594F3>

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

<sup>3</sup> 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.<sup>4</sup> In 2015, DPH found that 90 (62%) of the 146 active DPH permitted massage establishments were CAMTC certified.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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

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<sup>4</sup>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>

<sup>5</sup> 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

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

<sup>7</sup> 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.<sup>8</sup> 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

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<sup>8</sup> 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.

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

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

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