

## **LEGISLATIVE DIGEST**

[Planning Code - Massage Establishments]

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

### Existing Law

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

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

### Amendments to Current Law

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

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

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

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

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

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

#### Background Information

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

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